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**Some Aspects of Foreign Trade Regime of the
Russian Federation and Co-operation in the
Field of International Shipping**

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FOREWORD - INSRROP WORKING PAPER

INSROP is a five-year multidisciplinary and multilateral research programme, the main phase of which commenced in June 1993. The three principal cooperating partners are **Central Marine Research & Design Institute (CNIIMF)**, St. Petersburg, Russia; **Ship and Ocean Foundation (SOF)**, Tokyo, Japan; and **Fridtjof Nansen Institute (FNI)**, Lysaker, Norway. The INSRROP Secretariat is shared between CNIIMF and FNI and is located at FNI.

INSROP is split into four main projects: 1) Natural Conditions and Ice Navigation; 2) Environmental Factors; 3) Trade and Commercial Shipping Aspects of the NSR; and 4) Political, Legal and Strategic Factors. The aim of INSRROP is to build up a knowledge base adequate to provide a foundation for long-term planning and decision-making by state agencies as well as private companies etc., for purposes of promoting rational decisionmaking concerning the use of the Northern Sea Route for transit and regional development.

INSROP is a direct result of the normalization of the international situation and the Murmansk initiatives of the former Soviet Union in 1987, when the readiness of the USSR to open the NSR for international shipping was officially declared. The Murmansk Initiatives enabled the continuation, expansion and intensification of traditional collaboration between the states in the Arctic, including safety and efficiency of shipping. Russia, being the successor state to the USSR, supports the Murmansk Initiatives. The initiatives stimulated contact and cooperation between CNIIMF and FNI in 1988 and resulted in a pilot study of the NSR in 1991. In 1992 SOF entered INSRROP as a third partner on an equal basis with CNIIMF and FNI.

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Summary of INSROP Working Paper No 105 1998, IV.3.2: "Some Aspects of Foreign Trade Regime of the Russian Federation and Co-operation in the Field of International Shipping"

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The Report deals with the possible conditions for application of the principles of the General Agreement on Trade in Services (GATS, 1994) to the Russian market of sea transport services application of the main principle of openness calls for improvement in the administrative regulation of shipping in Russia. This is consistent with the present-day policy of Russia aimed at creating favourable conditions for development of co-operation between the Russian and foreign shipowners. The report analyzes the Russian tax legislation, foreign investments, customs tariffs, licensing, quoting and currency regulation.

A separate section of the report elucidates the transition of the Russian shipping to market conditions.

Thus, the above mentioned foreign economic, legal and organizational changes in the Russian Merchant Marine suggest that the policy pursued by Russia in relation to the national shipping meets basically the GATS principles and Russia may be regarded as a party to this General Agreements.

The report lays special emphasis on the fact that the realization of the GATS principles on the Northern Sea Route (NSR) will be instrumental with ever-growing openness of this route for international shipping. At the present time Russia has set up a favourable regime of the international commercial shipping along the NSR. As for the NSR the "notification principle" of ship admission has been established provided that these ships comply with special requirements; the ships are assisted in navigation through the NSR by the Marine Operations Headquarters with State supervision being carried out by the NSR Administration. However application of the principle of openness will call for introduction on the NSR of an international information and exchange system to deal with the potential cargo-flows, carrying capacity of the Arctic ships freight tariffs, icebreaker and port dues. All these developments are associated with heavy expenditures of money and time under the conditions of transition to the market relations. Implementation of these arrangements can be of assistance in actual incorporation of the NSR into the global system of sea routes.

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Abbreviations:

- CGS** - Consultative Group on Shipping
- ECTM** - European Committee of Transport Ministries
- GATS** - General Agreement on the Trade in Services
- GATT** - General Agreement on the Tariffs and Trade
- ILO** - International Labour Organization
- IMO** - International Maritime Organization
- NSR** - Northern Sea Route
- OECD** - Organization of Economic Co-operation and Development
- RF** - Russian Federation
- UNCTAD** - UN Conference on Trade and Development
- WTO** - World Trade Organization

Introduction

The international community seeks to promote stable, mutually beneficial and equal cooperation in the field of the world shipping without any form of discrimination and economic sanctions. It is necessary to find joint and just solutions to the arising problems, to develop and apply in practice general progressive principles of business relations, to harmonize national and regional shipping policy at the world level.

It is this policy that Russia pursues i.e. the policy of the departure from former stereotypes including those that relate to the shipping along the NSR; this policy has resulted in the improvement of relations with all countries. Favorable atmosphere has been created for the development of cooperation between Russian and foreign shipowners and the conditions of involvement of the country in the world economic relations have been improved.

In accordance with the policy conducted by the Russian Federation and oriented towards the transition from state-controlled to market economy, the reforms in progress provide for equal market opportunities.

Let us dwell on the most important aspects of economic policy of the Russian Federation (RF).

1. Some Aspects of Foreign Trade Regime of the Russian Federation

1.1. Taxation System

Taxation system in modern conditions makes the use of a wide range of various forms of levying which depend on the sources and types of incomes (profit, wages, dividend, interest), on the way of their transfer (legacy, gift) and on other factors including the incomes gained in the process of production or consumption, import or export of goods across national borders.

All taxes of the RF have been divided into three types: federal, republican and local. The taxation system of Russia is regulated by the package of laws consisting of 16 tax laws proper and of 3 laws of expanded contents, which also define some types of taxes. A principal law is the Law "Bases of the taxation system of the Russian Federation" N 2118 dated December 12, 1991 which defines principles of the formation of the taxation system, its structure, collection of taxes and control.

There is a separate tax legislation, which is applied to various spheres of activity, income and reserve forms, categories of payers. The legislation includes, in particular, the Russian Federation Law of December 6, 1991 N 1992-1 "Value Added Tax" and the Russian Federation Law of May 21, 1993 N 5003-1 "Customs Tariff".

1.2. Foreign Investment

The main purposes in the field of foreign investments under conditions of transition are the following: structural reorganization of the economy and stabilization of the economic situation in the country; stimulation of import of modern foreign technologies and technical management aiming at the development of competitive enterprises; formation of the competitive market environment and struggle against the monopoly.

Basic conditions for foreign investment in the country are regulated by the Law "On Foreign Investments" of July 4, 1991 and the Decree of the Russian President of September 27, 1993 N 1466 "On the improvement of Work with Foreign Investments". The standards of inter-governmental agreements on the encouragement and mutual protection of capital investments are also in force.

Juridical and private persons of other states are allowed to import any capital for the business activity of any form on the territory of Russia. The regime for foreign investors with certain exceptions can not be less favorable than that for Russian juridical and private persons.

The law "On Foreign Investment in the Russian Federation" provides for the possibility to establish two types of companies with foreign capital -- companies with 100% foreign capital and joint ventures with the mixed form of capital.

Foreign investors are allowed to carry out any economic activity not prohibited by laws of Russia. Some kinds of activity (insurance, banking service, communication etc.) need to be licensed. Besides, foreign investors are granted with full legal protection: their capital investments are not subject to nationalization, requisition and confiscation, except the cases specified by the legislation. In case of confiscation, foreign investors are entitled to compensation for the losses (including lost benefit) incurred as a result of following those directives issued by relevant State bodies of the RF which contradict the existing legislation of the RF.

In accordance with the Law "On Foreign Investment in the RF", foreign investors are guaranteed free remittance abroad of the profit, dividend, interest, license and commission rewards after appropriate taxes, dues and charges being paid. In 1992 Russia acceded to the 1985 Seoul Convention of the multi-lateral agency on investment guarantees and also signed the 1965 Washington Convention on the settlement of disputes between States, and national of other States.

At present, the work on three important laws in the field of foreign investments is at the stage of completion: new edition of the Law "On Foreign Investment" and the Law "Free Economic Zones" and the Law "On Concessions". A program of attraction of foreign investments to the privatization of state and municipal enterprises is being developed.

At the present stage the main method of attracting foreign capital to the Russian economy consist in establishment of enterprises with foreign capital share; the number of companies fully owned by foreign investors is increasing.

1.3. Tariffs and Dues

In accordance with general economic policy, legislative basis of the system for the regulation of foreign economic activity was formed in 1992 and 1993. Federal laws, normative acts of the Government and of some Ministries and Departments define the main parameters of this system. The central place in foreign trade regulation belongs to tariff methods.

The main purposes of the foreign trade regulation tariff methods are the following: protection of Russian manufacturers helping them to face challenge of foreign competitors; rationalization of the commodity composition for export in the RF; maintenance of rational combination of the export and import of products, hard currency incomes and expenses over the Russian territory aiming at stabilization of changes in the structure of the production and consumption.

A legislative basis of the customs and tariff system of Russia is the following federal laws: "Law on Customs Tariff" and "Customs Code of the RF".

The former identifies the structure of customs tariff, list of goods, order of customs cost evaluation, countries of goods origin, possibility of applying antidumping and compensation duties, possibility of granting tariff privileges. For instance, the Law declares that the extreme rates of import customs duties applied to the States, which enjoy the regime of the most favored nation, are set by the Federal Meeting of the RF. Specific rates of import customs duties are set by the Government of Russia.

Customs tariff of the RF for imported goods is built up on the basis of list of goods of foreign economic activity effective in the country from January 1, 1992. It is based on the harmonized system of the description and codification of goods developed by the Council of Customs Cooperation and Russia is its member since 1992. The harmonized system is utilized in Russia for the purposes of customs classification and statistics.

The procedure for determination of customs cost of imported goods included into the Law "On Customs Tariff", is based on the rules set out in article VII GATT. The rules used to identify the country of origin of goods are grounded on the principles established in the world practice. A country of origin may mean here a group of countries, customs unions, region or part of a country.

The law "On Customs Tariff" provides for the opportunity to grant tariff privileges. In particular, these privileges are granted to the goods temporarily imported in Russia and kept under customs control according to customs regimes the status of which is defined by the Customs Code of the RF; and to the goods imported as a contribution to the authorized funds of enterprises involving a foreign capital.

Besides, in accordance with the provisions of a number of international agreements to which Russia is a party, the following exemptions from the customs duty have been established: means of transport engaged in international trade, goods brought into the country for official or private use by representatives of a foreign State and goods moved under customs control through the Russian territory in transit to other countries.

Customs formalities are regulated by the federal laws and normative acts of the State Customs Committee of Russia; they are not complicated in form and contents.

The legislation of Russia pays attention to items of application of antidumping and compensation duties. So, the Law "On Customs Tariff" takes into consideration the possibility to fix special duties on import of some kinds of goods: these duties may be introduced as protection or counter measures. The following kinds of special duties are provided: antidumping duties, when goods are imported to Russia at lower prices than the normal cost of such goods; compensation duties, when in the production and export of imported goods subsidies were used in direct or indirect form; special duties -- if goods are imported in such quantity and on such terms and conditions, which threaten to cause substantial damage to Russian manufacturers or, in response to discriminative or other activities of foreign States, affect the interests of the RF.

At present special legislation is being developed to take protective measures with due account of the appropriate international practice in this sphere.

1.4. Licensing and Quoting Export/Import of Goods (Works, Services)

Under conditions of shortage of certain products on the internal market due to considerable inflation, side by side with customs tariff measures, it was necessary to use other forms of foreign trade regulation, first of all, licensing and quoting. These measures are being taken on the basis of instruments generally adopted in the world practice including the relevant provisions of GATT and the Agreement of Import Licensing.

The decree of the Government of November 6, 1992 N 854 "On Licensing and quoting of the export and import of goods (works, service) on the territory of the RF and decree N 1102 of November 2, 1993 " On Measures on the liberalization of foreign economic activity " formed a legislative basis for application of licensing and quoting in foreign trade activity.

A basis of regime of licensing is lists of licensed goods and a unified system of setting and distributing quotes and issuing licenses. The procedure for licensing and quoting of export and import is applied to all subjects of economic activity within the Russian territory irrespective of forms of ownership, location and place of registration.

The export/import licenses are issued by the representatives authorized by the Ministry of Foreign Trade of Russia in the regions. The total quotas of export are set by the Ministry of Economy of the RF on agreement with appropriate ministries and departments of Russia proceeding from predicted balances of production and consumption for the goods being licensed.

The quotas distribution system is combined and includes administrative and competitive types of distribution. The total quotas are of the following kinds: quotas for the state needs (distributed through the system of federal tenders); quotas to enterprises; regional and auction quotas.

The delivery of products for export to fulfill international economic (including currency and credit liabilities of the RF) is referred to the state interests.

The issue of licenses is carried out by the representatives of the Ministry of Foreign Trade of Russia and depends on the kind of product. The licenses issued should not be transferred to other juridical persons. Quoted goods require the documents which certify the delivery of products to the account of the quota allocated in accordance with an established order; these documents include the contract of delivery if an exporter is the brokerage firm. Special goods require permission of an appropriate ministry (department) of the RF. In all cases, the obligatory condition for issuing licenses is the presentation of a signed or initialed contract. When making changes in the main terms of a contract, the issued licenses have to be re-registered.

1.5. Currency Regulation

The currency regulation in the RF is applied in accordance with the Law "On Currency Regulation and Control" N 3615-1 of October 9, 1992 effective since October 1992. As an extension of the Law, the Decree of the Government dated March 6, 1993 N 205 "On the stabilization of currency and export control and the development of currency market" was adopted. It provides for further improvement of control over the currency income gained from the foreign trade operations. The main bodies of currency regulation and control are the Central Bank and the RF Government.

The principal aim of the currency regulation and control is to increase currency reserves of the State, stabilize national currency and achieve the full convertibility of rouble.

At the present time unified foreign currencies/rouble exchange rates are used for all calculations; these rates being quoted and published by the Central Bank of the RF on the basis of the results of sales at the Moscow Interbanking Currency Exchange.

In compliance with the existing legislation, non-residents have a right to import, transfer and mail currency value to the RF without restrictions when observing customs rules and to remit abroad the profit gained from investments on the territory of Russia.

1.6. Participation of the Russian Federation in the International Agreements Regarding the Issues of Trade and Political Regime

In improving its relations with the international community, the RF attaches great importance to the conclusion of international agreements on certain aspects of the commercial and political regime. At present the RF has such kind of documents (commercial contracts and free trade agreements) with 138 countries. The regime of the most favored nation is included into agreements with 126 countries.

The international agreements of the RF provide for usual exemptions from the regime of the most favored nation: privileges and advantages following from the agreements on the establishment of customs unions or free trade zones granted to neighbouring countries to facilitate border trade and to developing countries within the general system of preferences.

A number of trade agreements of Russia with developing countries provides for measures to protect market disbalance. The agreements specify that when choosing such measures, the parties should give the priority to those having less negative influence on the bi-lateral trade economic relations.

An important factor of democratization in the RF is the adoption in 1991 of the Law about the procedure of immigration and emigration. Russia as a successor of the former Soviet Union strictly follows this important act.

A significant step towards further joining the international community is an agreement on cooperation and partnership signed on June 24, 1994 which establishes partnership between the RF on the one hand, and the European Community and its member-states on the other.

2. National Shipping Policy of the Russian Federation at the Present Stage

National shipping is greatly influenced by reorganization of economy and fundamental changes in economic policy. In the first place, this is a free price formation which creates competitive situation both in shipping and other sectors, which will result in growth of production efficiency, reduction of expenses and, at the same, in bankruptcy.

In accordance with the policy conducted by the RF and directed towards transition to market economy as well as with the State Program of privatization, actions are being taken in the Merchant Marine on the reorganization of state companies into public joint stock companies. For instance, by the beginning of 1996, 87 joint stock companies and associations were registered, which is almost 74% of the total number of companies to be transformed. Among them there are 8 shipping companies, 18 sea ports and 12 ship repair yards. As to remaining enterprises the work is being done to transfer ownership of them to regions (oblast), districts (okrug) and republics of the RF.

Taking into account the importance of sea commercial ports for Russia, the work was undertaken to create state institutions (sea port administrations) on the bases of port property not subject to the privatization. The main functions of these administrations are to provide safety of navigation and order in ports, to supervise the technical operation of port facilities and objects, their repair and development. The RF Government adopted decree N 1299 dated December 17.1993 "On the organization of sea port management" in accordance with which the necessary normative documents regarding the establishment and functioning of sea administrations, were developed. Up to now 18 sea administration of ports have been established, such as Vanino, Vyborg, Kaliningrad, Novorossiysk, St.Petersburg, Magadan.

Special attention is paid to the formation of new competitive structures, reorganization of transformed sea ports, reformation of the state enterprises and their transfer to the municipal ownership. The privatization of merchant marine enterprises is to be conducted mainly, on the competitive basis enabling investors to assume certain duties for protection of state interests. At

the same time property problems should be solved and rent relations regulated. Some other problems especially those, which have a relation to the regulation of legislative and normative basis of the functioning sea administration of ports, have also to be dealt with.

In compliance with the decree of the President of the RF and acts of the government, complex organizational measures were taken in the Merchant Marine as far as insolvency (bankruptcy) of enterprises is concerned.

In accordance with the plan for realization of the decree of the RF government regarding licensing of transportation, forwarding, brokerage and other activities related to sea transportation process, appropriate regulations were developed and licensing of 13 types of activity was put into practice. The special structure "Morlitsensia" was established by the beginning of 1996, 1632 licenses were issued .

The Merchant Marine presently utilizes both free and regulated tariffs and rates of fees. Free tariffs, which vary under the influence of international chartering market, have been used since 1992 in the transportation of foreign commercial cargoes by Russian fleet.

3. Participation of the Russian Federation in International Shipping

Russia acceded to the Paris Memorandum of 1982 on the port state control of foreign vessels and to similar regional agreement of Asian and Pacific countries (Tokyo Memorandum). More than 40 joint companies and their branches are acting abroad in the shipping industry.

In full compliance with the Law about right of immigration/emigration, Russian seafarers get work on ships flying foreign State's flags and following the standards established by ILO conventions.

A new Code of Trade Navigation -- the main sea law of the country -- is likely to be adopted in the near future.

Russia has concluded a number of agreements, which consolidate, in a certain political and legal sense, the positions of the Russian merchant fleet as an equal participant of international shipping together with the fleets of other marine States.

Trade shipping practice shows that it is possible and necessary to solve some problems between interested countries on bi-lateral basis. Among shipping questions regulated in relevant documents, there are provisions which define the conditions of ship's staying in the ports of contracting parties, mutual recognition of ship's documents as well as the assistance to ship and crew in case of wreck. A lot of trade contracts concluded contain an article on shipping, however in the majority of cases the articles specify only the conditions of ships' staying in port.

The growth of the intensity of international sea shipping and the increasing separation of the sea transport as a relatively independent industry necessitated the regulation of state relations in the sphere of shipping by means of special sea agreements other than commercial contracts.

Agreements on the commercial shipping materialize many of usual standards existing both in practice of international shipping and in relations of the RF with certain countries.

Among partners of the RF there are not only countries of the so called traditional shipping, but also developing countries and some of them have no such marine fleet which would satisfy their needs in the development of foreign economic relations. In connection with changes occurred in the former Soviet Union, the contracting parties are now former republics of the USSR, which have become independent States. Thus, among the States having agreements with the RF about sea shipping (54 such agreements at present) many countries of Europe, Asia, Africa and Latin America are represented.

With some exceptions all agreements on merchant shipping are similar in their contents. They regulate three basic groups of questions.

The questions of shipping policy of Contracting Parties:

A substantial factor in this group is a rule consolidating the responsibilities of States to follow the principle of freedom in the merchant shipping and refrain from any actions, which could cause damage to normal development of the international shipping. This rule is used in agreements with a purpose of supporting the intention of the parties to follow recognized principle of the international law; besides, this rule is being developed in the standards set by agreements regarding the regulation of sea transportation.

It should be noted that such norms embrace not only bi-lateral transportation but also the participation of ships of one of the contracting parties in trade between the ports of another party and third countries. Principle of freedom of commercial shipping lies also in the basis of the rule according to which the vessels flying the flags of third countries might operate between the ports of contracting parties.

The regime imposed on vessels and crews within the territories of contracting parties is regulated fairly in detail and takes up much space in the agreements. Here the main point is to grant the most favorable treatment provided by the parties to each other on the basis of mutuality or national regime in a number of cases of merchant shipping, which is usually associated with calls and stays of ships in ports. The spheres of application of these principles, as a rule, are different. If limits of national regime are strictly defined (free call at a port, use of ports for loading and discharge of cargo and passengers, payment of port dues and other charges and taxes as well as other services intended for sea navigation), the most favorable regime is mainly granted without restrictions - for all aspects of the commercial sea navigation.

A group of articles related to the regime of ships staying in port also includes provisions regulating the issues concerning the recognition of ship's documents in particular measuring certificates. Many agreements stress the responsibility of the parties not to undertake the

remeasuring of the other party's vessels if they have on board legally issued certificates as well as to take, so far as marine legislation allows, necessary action to facilitate and speed up the seaborne transportation and port formalities.

Various aspects of legal regime for seamen are of importance in the agreements of merchant shipping. The questions related to seamen's coming ashore during a stay of a ship of one party in a port of another party, transit of seamen through the territory of partner-countries according to an agreement, are regulated in detail.

A group of articles concerning the regime of ships and seamen deals with criminal jurisdiction and legal proceedings. So in accordance with the international law, coastal States do not interfere with any incidents occurred on board a foreign ship during her passage through the territorial sea of this State. Exceptions are only the events when the consequences of violation of the law extend to the territory of neighboring coastal State, or peace is disturbed in the country or master (consul of the ship's flag State) requests local authorities for assistance or in case of illegal drug traffic.

Agreements on the merchant shipping allow us to spread the above order to internal waters and specifically to ports where jurisdiction of a coastal State is usually fully applied.

In the same way the disputes regarding the employment of seamen are settled. In accordance with the agreement, the judicial bodies of the contracting parties do not accept for hearing the above disputes between the master and a crew's member of another party without approval of a diplomatic or consulate person of the ship's flag State.

A merchant shipping agreement regulates the items concerning the exemptions from taxation in the field of sea transportation, prohibition of the arrest or detention of ships by one of the parties in ports of another party in connection with civil cases and rescue of crew and passengers as well as of ships and their cargoes by one party then in distress near the shore of the other party. The agreement also regulates the establishment of agencies of shipping organizations of parties on the territory of a partner-country according to the agreement.

The third group of items regulates cooperation of two countries in the field of shipping. One of the main articles here is the article providing for cooperation of governmental organizations who are responsible for marine affairs in both countries, exchange of information of mutual interest. Development of these articles involves some provisions related to the formation of special joint committees the tasks of which include the consideration of recommendations on various shipping issues for appropriate organizations.

An agreement on commercial shipping may also contain the provisions on rendering assistance in the training of personnel for fleet and shore services as well as in the construction of national fleet.

Practical use of such agreements shows that they are a reliable legal basis for the improvement of links between countries in this sphere irrespective of the development of their national fleet or social formation.

The agreements specially dedicated to the issue of how to avoid double taxation in the sphere of shipping play the leading role. The conclusion of such agreement allows us to release the Russian shipping companies from taxes that should be levied from income of a foreign shipowner in a number of countries.

As far as payment of ship, port and other charges is concerned, some agreements of sea shipping have the provisions on granting the same rights as the rights of own ships to the ships flying the third party States' flags and operated by shipping companies of contracting parties. It should be noted that such provisions are applied if they do not contradict liabilities of the party following from its international agreements or appropriate legislative acts.

At the present time in sea commercial ports the rates of dues and charges, which have been fixed by the Ministry of Economy upon presentation by the Ministry of Transport, are in force in the RF. In accordance with the above rates, preferential vessel's fee is applied to foreign ships flying

the flags of States with which Russia has an agreement on merchant shipping as well as other agreements providing for the most favored nation treatment.

When there is no agreement with the flag State, preferential rates of vessel's fee are not applied.

4. General Agreement on Trade in Services and its Influence on the Activity of the Sea Transport of the Russian Federation and the Shipping along the Northern Sea Route

A problem of Russia's accession to GATT/WTO is now one of the key problems in foreign policy of the RF; the problem becomes a leading one for the development of internal economic changes in Russia.

The completion of multi-lateral trade negotiations of the "Uruguay" round within the General Agreement on Tariffs and Trade (GATT) in 1993 became one of the most significant international events. According to preliminary evaluation the agreements of the "Uruguay" round will result in the growth of the world trade by 2005 by USD 745 as compared with the level, which would be reached in the absence of these agreements. An additional annual increase of the total world income will come to USD 213 - 274 bln.

The final package of agreements achieved as a result of negotiations for many years includes 28 agreements having no precedents in the history of international economic relations. Among the agreements concluded there are such principally important ones as the establishment of the World Trade Organization (WTO), General Agreement on Trade in Services (GATS).

Globalization of the world economy including currency - financial sphere and scientific and technological revolution gradually attracted attention to such phenomenon as the international trade in services. For a long time doing a service was considered as something accompanying the traditional goods trade. However, national investigations carried out in a number of countries in

the early 80s, clearly revealed the increasing independent role of services in the economy (transportation, telecommunication, banking and insurance, tourism etc.) and its considerable export potential. According to the assessment, about 20% of the world trade and 60% of the production now fall on the services sector. However, the absence of generally recognized rules in the international trade in services led to considerable differences in national normative documents, systems of statistical reports in terms of the qualitative and quantitative estimation etc. All the above became an obstacle to the international exchange of services.

The trade in services is becoming a sphere of sharp international rivalry that increasingly affects the process of the world economic development. Of special importance in these conditions is a problem of the regulation of the trade in services. It is difficult to solve this problem not only due to not infrequent disbalances in the interests of exporters and importers of services but also because of the specific character of this sector of the international economic relations, which has not been sufficiently investigated. The problem becomes more vital also in connection with both the expanded participation of Russia in the world economy and activity of international organizations.

Three groups of trade and political instruments, which regulate contracts in services sector, have spontaneously formed in the international practice: national legislation; bi-lateral trade and economic agreements; conventions and other documents developed by international organizations. But they do not take into consideration the particulars of new quickly developing kinds of services and forms of their presentation. Besides, created in different period of time and isolated from each other, they are badly coordinated and sometimes contradict each other.

National legislation of foreign countries sets the regime of trade in services in the interests of influential businessmen and services consumers, employment of population, conditional well-balanced external economic calculations etc., including political and military strategic interests. It is assumed that protectionism has more widely spread in the sphere of trade in services than in commerce. Various measures are taken to protect the internal market of services from direct

investments in some branches of this sphere including the limitation of import of some kinds of services.

Bi-lateral agreements provide for some liberalization of trade in services. These agreements may take the form of general treaties of friendship, trade and navigation, which include articles related to the sphere of services, understandings regulating different investments and also special trade and economic agreements.

General and investment agreements often state the matter of mutually beneficial granting of the most favored nation treatment and national regimes of foreign companies extending to their firms which provide the services. However, many service branches are excluded from such agreements and the reciprocity is conventionalized in practice, so the companies capital exporters enjoy the advantages of the situation.

It is worth paying special attention to certain trade economic agreements, which were initiated by USA in the second half of the eighties. They specify in detail liberal conditions of exchange of services, define an appropriate regime for foreign enterprises acting in this sphere on the territory of the partner.

Some attempts of the development of universal rules regulating exchange of services in the interests of all countries, were undertaken in the late forties in connection with the preparation for the establishment of the International Trade Organization. But its charter was not ratified and draft rules was not accepted.

The main objective of the accepted General Agreement on Trade in Services (1994) consists in liberalization of the trade. It should be noted that in many countries, share of services comes to about half of the overall internal product. Therefore insufficient involvement of this sphere in the international trade adversely influences the efficiency of the whole economy of the state. GATS covers the following areas: commercial activity of companies involved in the international trade

in services, the use of the governmental regulation and subsequent negotiations on sector agreements.

4.1. Influence of GATS on the Activity of the Sea Transport of the Russian Federation

GATS with possible incorporation of international maritime transportation services, creates new economic and political conditions for the access of Russian shipowners to the world chartering market. Such conditions will not depend, in principle, on the membership in GATS. Non-accession of Russia to GATS will not protect her water transport against the influence of this agreement. This may be explained, for instance, by the fact that national shipping regulation in the GATS contracting parties (countries) will be brought in line with the requirements of the agreement, which also affects interests of non-contracting parties. In its turn, the latter will lose the advantages provided by the agreement. This situation may lead to discrimination of the non-contracting parties. If Russia's accession to GATS precedes her accession to WTO/GATT, some negative aspects may arise from the relations between GATT and GATS, including aspects stipulated in the procedure of settlement of disputes by means of preferences established for GATT members. In principle, Russia may become an equal contracting party to GATS and/or to a sector agreement on transportation services, but only after Russia becomes a member of WTO/GATT. To assess consequences of this fact, possible conditions of applying the GATS principles to the Russian market of sea transportation services should be considered.

Progressive liberalization provides for the membership in GATS but this demand is not peremptory. Membership in the sector agreement does not entail obligatory membership in the General agreement, but progressive liberalization is achievable only under conditions of liberalization of the whole services sector. Consequently, a distinctive feature of the said agreement is its comprehensive character. Liberalization of the sector of maritime transportation services is in close connection with the liberalization of not only all transportation systems put together but also the whole services sector of each State. Thus, the substantiation and expediency of Russian membership in the sector agreement should be elaborated on the basis of interests of the whole transportation system. The interests in question will probably be of a subordinate

matter to the general interests of the RF related to the liberalization of the whole national sphere of services.

Application of the principle of openness will require the improvement of administrative regulation of the Russian shipping. Besides, considerable expenses will arise on the introduction of information and data exchange systems, which are now being actively implemented in the foreign developed countries as well as on the development of a relevant system of information service. All the above involves enormous expenses of time and money.

Implementation of the national regime will require the revision of the whole system of the shipping regulation in Russia. It is feasible provided that the changes of the national regime, which affect economic activity of foreigners on the Russian territory, take place in the country (some of these changes are in progress now).

The principle "access to the market" requires certain changes in the regime of access to the Russian market of maritime transportation services of foreign shipowners. Following the indicated principle may lead to the denunciation of bi-lateral shipping agreements. This will entail the revision on the part of Russia, of a number of liabilities on multi-lateral international agreements.

Other principles are not so significant as the above.

A brief analysis of the sector agreement principles on transportation services shows that substantial changes in the legal and economic Russian systems will be required to put these principles into effect. Even if they take place, such changes will be implemented only at the end of the nineties. Furthermore, the effect of low prices of raw materials and fairly high economic growth rate in the developed countries predicted for the last decade of the twentieth century may lead to the growth of trade and demand for tonnage.

This might intensify the liberalization process and place Russian shipping industry in difficult situation because it is not yet ready to face the situation. On the contrary, at the beginning of the 21st century the world shipping will probably experience once more the crisis situation (though not so deep) of disbalance of the demand/offer for sea tonnage.

This situation may entail a certain departure from the liberalization principles in shipping industry and, to some extent, a return to bi-lateral agreements. Conditions for the liberalization of the maritime transportation service market will probably be formed in the RF by that time.

The purpose of better integration of the Russian national market into the international one is to stimulate the activity of Russia in the international economic organizations.

The aspects of international shipping are incorporated in the sphere of activity of the following international organizations of the UNO system: International Maritime Organization (IMO), UN Conference on Trade and Development (UNCTAD), International Labour Organization (ILO), regional UNO committees. The following group of the international organizations which substantially influence the regime of the international shipping include: Organization of the Economic Cooperation and Development (OECD), Consultative Group on Shipping (CGS), European Committee of Transport Ministries (ECTM), Memoranda of Paris and Tokyo etc.

IMO - organization of the UNO system which exclusively deals with the issues of shipping.

IMO executes the following three major functions: support to the co-operation of governments in any technical questions pertaining to shipping and, first of all, to such matters as the standards of safety and shipping efficiency. Besides, the organization contributes to extensive exchange of information between States in relation to any technical problems concerning shipping; provides consultations and co-ordinates the activity of other organizations of the UNO system and all concerned with the problems of shipping; deals with the problem of the marine environmental protection; and is engaged in the prevention of discriminative, unjust and restricting practice in the international shipping; renders assistance, as far as possible, in providing proper maritime

transportation services. As one can see, the last function of IMO has a direct relation to the sector agreements to be developed. In this connection the question arises -- why it is that GATT (not IMO) discusses the questions of the international shipping liberalization? The answer has been given already: the chosen approach is a complex one. It embraces the whole sector of services and implies the liberalization process in this sector at all levels from top to bottom. Consequently, there should be preferential unilateral influence of the general agreement on those organizations, which deal with special aspects of the services sector. In other words, IMO will operate within the same regime created by GATT. However, on the whole, IMO's activity does not require any revision in connection with the acceptance of GATS and even on the contrary, the implementation of GATT/GATS regime provides for wider and more active dissemination of IMO standards.

ILO's activity in the sphere of improving conditions of seafarers is believed to be the most successful. GATS specifies that the liberalization process on the market of the maritime transportation services will be carried out taking into consideration the national policy of States, first of all in the social sphere, that is in the ILO's sphere of activity.

Therefore, gradual deregulation and harmonization of the conditions in social sphere will be effected by means of ILO standards, so this international organization will gain in significance.

UNCTAD deals mainly with economic aspects of the international shipping and issues related to the activity of conferences on shipping lines, development of multimodal transport, improvement of port efficiency, protection of shipper's interest, development of the merchant marine of States, cooperation between the States in the field of commercial shipping, functioning of the market mechanism of tonnage demand and offer, cargo transportation, conditions of vessel registration etc. were always on the agenda of its Committee on seaborne transportation and later of the committee on the development of services sectors (seaborne transportation). A short list of the above issues shows that WTO/GATS will impact the activity of UNCTAD.

The main international document in the shipping industry developed and accepted in UNCTAD is the Convention on the Code of conduct of liner conferences. Its prospects in many respects will depend on the way of the GATS will regulate the international regime in shipping. Most of developing countries consider the Code as a vital instrument for development of their national economies. They assess the preferential regime inserted into the Code, as being stipulated by the development purposes. Principles of GATS may liquidate the indicated preferences, but at the same time, GATS provides for some advantages for the developing countries because they are granted the right to open national service market with facilitation of access to the markets of contracting parties at the same time.

In conditions of the active governmental regulation of shipping, significance of the Convention on Code is much wider than its significance for the development purposes. It exerts harmonizing influence and contributes to elimination of the excessive unilateral regulation of the international services of the Merchant Marine. In this case, from the viewpoint of normal functioning of the international shipping, the preferential regime of the Convention on Code on the one hand, and its harmonizing effect on the other hand are the compliment of each other. It facilitates the cooperation between shipowners, shippers and governments on the universal basis. In this respect the Code is more liberal than some critics represent it. The formula 40:40:20 has a negative influence mainly on those countries which possess small cargo base of their own provided that they have sufficiently competitive fleet. Thus, in conditions of modern shipping, the Code plays important positive role not only in the achievement of the development purposes.

Taking into consideration changing regulations of economic activity in the RF, including the regulation applied in the field of shipping as well as integration of the country into the world market, the consequences of the adoption of GATS for the efficiency of Russian participation in the world shipping and international maritime organizations, will be equivocal.

The equivocal character implies an active role of the RF, and at the same time, a flexible approach to the achievement of country's readiness to assume the obligations provided by GATS in the field of shipping.

Thus, if Russia joins the organization the activity of which is directed to the observance of the rules of fair competition at the world market, it will serve as additional stimulus to speed up economic reforms. Joining the WTO in combination with the use of economic instruments of the state regulation and strengthening of economic independence of enterprises will contribute to the openness of the Russian economy and to its deeper integration into the world economy.

The reform of the foreign economic mechanism coupled with the RF participation in WTO will help in transition to the real market relations when equal evaluation criteria are utilized for internal economic and foreign trade operations. Moreover, the extent of involvement of enterprises in the international competitiveness will not depend on their wishes, but depends on conditions of the world market; the observance of its laws requires the participation of the country in the WTO.

Under conditions of continuous changes of the forms of international economic relations and arising of new problems, not only national, but also international instruments and methods of regulation of foreign economic relations will quickly change. WTO membership would grant Russia the right to speak at meetings and conferences of the working groups of organizations where these instruments are developed.

At the same time, membership in this organization will restrict the freedom to choose means of regulation of foreign economic relations only by those means, which do not contradict the general agreement. The RF will be obliged to grant the most favorable regime to all WTO countries and to follow the procedure of dispute regulation etc. established in the organization.

Irrespective of the inclusion of international maritime transportation services in GATS, the fact of the consideration of shipping problems opens a new stage in the international regulation of relevant economic sphere. It shows the intention of the developed countries in the first place to trade off different kinds of economic activities to be able at the expense of concession in one sphere to achieve certain advantages in another.

The main aim of the General Agreement on Trade in Services consists in the liberalization of the above trade. The basic method chosen to reach this aim is the creation of conditions for the higher level of competition in the international labour division in the sphere of services. It is assumed that in conditions of validity of the indicated principles, market mechanism becomes particularly stable. Such principles are: openness, progressive liberalization, national regime, regime of the most favored nation/ non-discrimination, access to market.

GATS and the eventual sector agreement on the transportation service trade may substantially affect the regime of the Convention on the Code of conduct of liner conference. It is supposed that GATS principles are incompatible with the formula of cargo division implemented by the Convention. However, it is believed that the Convention on the Code has substantially modified the regime of liner shipping having made the liner conference system more open. From this viewpoint, the Convention on the Code may be considered as an intermediate step from closed to liberalized shipping.

Application of GATS advantages in the international shipping would also be important for the countries, which are not contracting parties to the mentioned agreement. One should suppose that the contracting parties of GATS are able to conclude bi-lateral agreements on shipping with the States, which are not members of the General agreement. But in this case, the question is likely to be raised with regard to partial inclusion of the GATS principles (for instance, openness) into such agreements. This may entail modernization of the existing shipping regulations in Russia.

Substantiation and expediency of the Russian membership in the eventual sector agreement on maritime transportation services may be considered only on the basis of interests of the whole transportation system of the country. Nevertheless, bearing in mind the role of the Russian Merchant Marine for transportation of foreign trade cargoes, its role in the liberalization of transport services is considered to be essential.

Changes taking place in the legal system of the country affected, in particular, such important aspect of foreign economic activity as customs regime.

Customs regime of seaports is regulated by the 1993 Customs Code of the RF. In accordance with article 3 of the Code, the customs territory of the RF includes the land of the RF, territorial and internal waters and the air space covering these areas. The customs territory also incorporates man-made islands, structures and constructions, which are under exclusive jurisdiction of the RF in respect to customs affairs and are situated in the marine exclusive economic zone.

Legislative and sub-legislative normative acts regulating customs aspects and previously effective acts have lost their force since the adoption of the new Customs Code. The provisions of previous acts are used now only in the part which does not contradict new customs legislation. In this connection new rules of customs control for ships and cargoes and those for the goods of persons crossing the state border of the RF should be developed.

Customs Code (article 2) identifies the following purposes of the customs policy of the RF: ensuring the most effective use of the instruments of customs control and regulation of the barter in the customs area of the RF, participation in the fulfillment of trade and political tasks of protecting the Russian market, stimulating the development of the national economy and other tasks of economic policy of the RF. The RF, as stated in the Code, strives for the active participation in the international co-operation in the sphere of customs affairs. Customs affairs in the RF develop in the direction of harmonization and unification with the generally accepted international norms and practice.

Article 6 states that if the international agreement of the RF specifies other rules than those stated in the present Code and in other legislative acts of the RF regarding customs affairs, the rules of the international agreement should be applied.

In accordance with item 17 of article 10 of the Code one of the main functions of customs bodies of the RF is to provide for the fulfillment of international obligations of the RF related to customs

affairs. On the basis of these provisions as well as taking into consideration the absence of normative act regulating the order of customs control in seaports, customs services should perform inspections of ships, cargoes on board and passengers in compliance with the provisions of the Convention on the facilitation of international seaborne shipping of 1965 (the RF is a participant of the Convention since March 5, 1967), which is the main international agreement on the unification and facilitation of customs regime in seaports.

In accordance with provisions of the Convention contracting governments undertake to carry out all relevant measures to facilitate and promote the international seaborne transportation as well as to prevent undue delays relating to ships, persons and property on board. Participants of the Convention undertake to cooperate in determination and application of measures directed to facilitate the arrival, staying in port and departure of ships by means of the fullest unification of formalities, requirements to the documents and various procedures where such unification will simplify and improve international shipping. The Convention puts no difficulties to the use of any extensive measures of support, which may be taken by the States with respect to international seaborne shipping on the basis of national legislation or any other international agreement. The Convention recommends to the State bodies in co-operation with shipowners and port administration to take appropriate measures in order to reduce port time for ships to a minimum and, therefore, to satisfactorily organize port operations (item 2.12) with due regard to the procedures to be carried out while entering the first port of call. The state authority should minimize the requirements to formalities and documents in any next port of call in the same country visited without any intermediate call at a port of another country (item 2.13).

The Convention also recommends the State authorities to co-ordinate usual working hours of port services with periods of intensive port operations in such a way as to avoid that a ship is unduly delayed after entering the port or upon its readiness for departure, and to minimize the time needed to accomplish all necessary formalities.

The RF, being a member of the 1965 Convention, undertook appropriate obligations to comply with the provisions of the Convention and to adopt such national legislation, which would meet the standards and practice recommended by the Convention.

The main principle laid down in GATS and, first of all, such principles as openness, liberalization and access to the market may cause certain difficulties related to the special features of the legal regime of passage along the Northern Sea Route.

4.2. Influence of GATS on Shipping along the NSR

In view of the geographical, natural and historical conditions the legal status of some water areas of the Arctic and, in particular, of water areas of the Arctic Ocean is characterized by a number of features which differ from those in the other regions of our planet. It is quite reasonable that the same is precisely true also for the Arctic regions of the Russian Federation.

The special natural conditions in the Arctic, particular vulnerability of the natural environment are responsible for the specific character of legal regulation of shipping in the Arctic including relevant restrictions to navigation within this area.

The nature of legal regulation of activities oriented towards the use of water areas and natural resources depends on the multitude of diversified factors, and among them, the most essential factors are: ever-increasing inclination of the international community to participate in multipurpose development of the region, which is attributable to the land fertile in natural resources, to the concern for rational exploitation of these resources and maintenance of ecological balance, to the needs for comprehensive scientific research on an international scale. In this connection it is quite understandable that the accomplishment of these goals is confronted by the transport problem, which, taken separately, gives rise to a totality of various problems ranging from technical-operational and purely economical to political and legal ones.

Moreover, the problem of legal regulation in the Arctic is closely tied in with the priority of interests of the circumpolar States, so the development of infrastructure of the Arctic regions involves the economical well-being of peoples of these States, their economical safety and defence potential. The best norms for the present legal status of the sea areas adjacent to the Russian coastal territories along the Arctic Ocean is the norms of international law enunciated, in particular, in the Geneva Conventions on the Law of the Sea, 1958, and UNO Convention on the Law of the Sea, 1982, relevant legislative acts of the USSR in those parts where they do not contradict the Constitution and other legislative acts of the Russian Federation. The Russian laws, as such, relating to this field are in the process of formulation. This relates both to the law establishing legal regime for various kind of sea areas and to the special legislative acts regulating activities in the Arctic.

The legal regime of admitting ships to the Northern Sea Route and to navigation along its seaways is based on the provisions of the Russian legislation relating to the regulation of the procedure of admitting and activity within such areas as inland waters, territorial seas and exclusive economic zone; the totality of relevant constituent routes lies entirely within the waters falling within the sovereignty or jurisdiction of the Russian Federation.

The fact that the individual sections of the NSR seaways within one or another period of time may lie in the open sea outside the economic zone does not affect the integrity of this transport communication since the presence of a water-borne vehicle in such sections is impossible without crossing of the Russian waters.

The totality of the factors mentioned above makes it possible to place the NSR into the category of national transport communication of Russia. The latter just points to the fact that Russia has the exclusive right to establish and regulate the use of the whole route and its individual seaways as well.

At the present time the admission to the NSR is regulated by the "Regulations for Navigation on the Seaways of the Northern Sea Route" approved by the USSR Minister of Merchant Marine of

September 14, 1990 and put into force July 1, 1991. According to this document, free admission to this communication may be granted to ships of any nation on the non-discrimination basis. The admission is supervised by the special Russian navigational services: The Marine Operations Headquarters performing their operations on the basis of the Murmansk and Far East Shipping Companies; besides the Administration of the Northern Sea Route is a co-ordinator of relevant operations in this region.

The Owner or Master of a ship intending to navigate through the Northern Sea Route shall submit to the Administration a notification and request for navigation through the NSR in compliance with the form and time as stated in the "Guide to Navigation through the Northern Sea Route" 1996. The Administration shall consider the submitted request and inform the submitter of the possibility of navigation through the NSR, and other circumstances to be taken into consideration by the Owner or Master.

To navigate the Northern Sea Route, a vessel shall satisfy special requirements; the Master or a person who performs his duties shall be experienced in operating the vessel in ice. If these persons have no such experience, the Administration may assign a State pilot to assist in navigation of the vessel through the NSR.

A necessary condition for admission of a vessel to the Northern Sea Route implies that the vessel shall have on board a certificate of financial responsibility with respect to the civil liability of the Owner for damage inflicted by pollution of the marine environment and the Northern Coast of Russia from the vessel.

Conclusions

1. Opening of the Northern Sea Route for admission of foreign ships is directly associated with the prospects for international co-operation in the field of its further investigation and development. This move of the former USSR is consistent with the GATS principles. The legal aspects of co-operation may develop in various directions among which the co-operation in elaboration and solution of legal problems within the framework of the Barents Sea Council and its Working Group on the Northern Sea Route, Arctic Initiative, Declaration on the Arctic Environment Protection, etc may become the promising ones.

2. The main principles laid down in GATS, such as openness, liberality and access to the market, being realized on the NSR may contribute to development of the international shipping through it. At present, Russia has established a favorable regime of the international navigation along the NSR.

3. Regime of navigation in Arctic waters is defined by the "Regulations for Navigation on the Seaways of the Northern Sea Route", 1991 which "on the basis of non-discrimination for vessels of all states, regulate navigation through the Northern Sea Route for the purposes of ensuring safe navigation and preventing, reducing, and keeping under control marine environment pollution from vessels since the specifically severe climatic conditions that exist in the Arctic regions and the presence of ice during the most part of the year bring about obstacles, or increased danger to navigation while pollution of sea or the Northern Coast of the Russia might cause great harm to the ecological balance or upset it irreparably, as well as inflict damage on the interests and well-being of the North peoples". This provision is formulated on the basis of article 234 of the UNO Convention on the Law of the Sea 1982 and effective from 1994.

In accordance with the Regulations for Navigation on the Seaways of the NSR, with the purpose to ensure the safety of navigation in complicated navigational and ice conditions icebreaker and pilot escorting has been made compulsory. Order of the icebreaker escorting is regulated by the

“General Rules of Navigation and Staying of Ships in Sea Ports” as well as by relevant resolutions concerning ports.

4. Ports of Providenya and Igarka are open for foreign vessels. As for such ports, bearing a relation to the NSR, as Murmansk, Arkhangelsk as well as Nakhodka and Vladivostok they are traditionally open for the international sea transport. According to the Decree of the Government of the Russian Federation ports of Dudinka, Dikson, Tiksi, Pevek and other Russian Arctic ports are annually open, for a period of Arctic navigation.

5. In accordance with the GATS principle of openness the exploration of the needs for introduction on the NSR of an international information and data exchange system on potential cargo flows moving along this route, carrying capacity of ships with ice class, freight tariffs, icebreaker and port dues, has been conducted.

6. Thus, the economic stabilization of the Russian North on the whole suggests that gradual changes of existing regime of shipping regulation in Russia will be directed towards its liberalization according to GATS principles.

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REVIEW OF INSROP WORKING PAPER

No. - 1997 IV.3.2.

**SOME ASPECTS OF FOREIGN TRADE REGIME OF THE RUSSIAN FEDERATION
AND CO-OPERATION IN THE FIELD OF INTERNATIONAL SHIPPING**

An International Northern Sea Route can only be created if the Russian Federation (RF) does not by accident or design allow political and/or commercial and/or regulatory barriers to remain or be placed in its way. In this interesting working paper the learned authors start by painting a helpful general commercial and legal back cloth summarising the present RF law on taxation, foreign investment, tariffs and currency regulation. They then continue by examining the present state of development of RF's policy on and regulation of national shipping and port development and the RF's participation in international shipping. Finally, they discuss the RF and GATT/GATS.

These are all large subjects to be covered in a 39 page paper, particularly when, as the authors conclude, the "foreign trade regime and national shipping policy of the Russian Federation are in a stage of formation". With such uncertainty and confined by space, the authors can only summarise what has been implemented so far and discuss possible future regulatory change. The paper can perhaps be best described as a helpful signpost at a cross roads where all the roads have not yet been built.

The benefit to the INSROP Programme is that in broad terms the paper highlights and/or summarises:-

- a. The RF's developing interest in and commitment to foreign trade and investment.
- b. The plans within the RF to develop 18 "Sea Administrative

Ports".

- c. The expectations of the RF to adopt "soon the new Code of Trade Navigation".

However, the paper leaves open and uncertain the question of when and how foreign flag vessels will be permitted to transit the Northern Sea Route for the purpose of delivering cargoes in the RF or elsewhere or in loading cargoes in the RF for delivery in the RF or elsewhere.

While appreciating that the learned authors cannot write definitively on what the future may or may not hold in these important areas they very valuably identify the uncertainties in the development of the RF Trading and Shipping law which must be resolved if the Northern Sea Route is to become a legal and commercial reality perhaps nationally and certainly internationally.

PETER MORGAN
CLYDE & CO LONDON

Review of INSROP Working Paper
by A.I. Frolov, M.S. Khanin and I.N. Mikhina
on "Some Aspects of Foreign Trade Regime of the Russian
Federation in the Field of International Shipping"

In my opinion, the working paper is quite clear in giving a description of various aspects of the Russian legislation, with particular emphasis on the changes introduced after the dissolution of the Soviet Union. However, a number of general and specific remarks could be made. These remarks, which are hereunder explained, would suggest a revision of the paper.

The paper seems little critical and rather optimistic, as if the transition from a planified to a market-based regime could be done without particular problems. More elaboration on the choices already made by the Russian legislator and the possible future decisions (including the participation to GATS) would be useful for the reader.

A Western reader, who often has difficult access to the sources, would also benefit from textual translations in English of the main Russian provisions. Footnotes with the precise quotations of legislation from official publications could be added, together with some information on the most important doctrinal works.

In certain cases more details seem useful. For ex., at p. 6, it may be asked what are the "certain exceptions" to the principle that the regime for foreign investors cannot be less favourable than that for national investors. At p. 9-10, it may be asked whether countervailing duties according to Russian customs legislation have ever been established. At p. 17 (and following pages) a list of the bilateral agreements on commercial shipping in force for Russia could be given together with some quotations of their most important provisions.

Although English is not my mother tongue, it seems to me that a linguistic revision by a competent editor is needed. Besides some evident typing mistakes (for ex., "contradicting parties" instead of "contracting parties", at p. 17; "upwersally recognized" instead of "universally recognized" at p. 23), the meaning of some sentences is not clear: for ex., where, at p. 30, it is said that the prospects of the Code of conduct of liner conferences "in many respects will depend on the way of GATC regulating the international regime in shipping will regulate GATC".

More care for English official names is also needed: for ex., GATS, which means "General Agreement on Trade in Services" (and not "General Agreement on the Trade of Services"), becomes GATC (a cyrillic S?) after p. 29. The "Convention on the regulation of investment debates between States" (p. 7) is in reality the "Convention on the settlement of disputes between States and nationals of other States". The "UNO Convention on the marine law" (p. 38) is in reality the "United Nations Convention

on the law of the sea". At p. 16, it is unclear what are the "MOT conventions" (perhaps the ILO conventions?).

A few words on the Northern Sea Route are spent in the conclusions (p. 38). In my opinion, a full paragraph should be devoted to discuss how the present Russian legislation on shipping could influence the development of navigation through the NSR and whether changes in the legislation would be appropriate to meet the special needs of the NSR.

Milan, 25 May 1997.

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Authors' Answer to Reviews of INSROP Working Paper

IV.3.2

1. *The esteemed reviewers Mr.P.Morgan and Dr. T.Scovazzi point out that the paper leaves open the questions of international legal and trade regime on the Northern Sea Route.*

In this connection, the paragraph 4.2 «Influence of GATS on Shipping along the NSR» has been included into the paper.

The following conclusions have been made in the paper:

■ Russia has set up a favourable regime of international commercial shipping along the NSR. Based on the Article 234 of the «UN Convention on the Law of the Sea», 1982, the «Regulations for Navigation on the Seaways of the Northern Sea Route», 1991 have been published. These Regulations open access to the seaways of the NSR for vessels flying any flag provided that they meet special requirements. The goals of regulation of shipping along the NSR are to ensure navigational safety of shipping and to prevent pollution of marine environment from ships;

■ application of the GATS principles (openness, liberalization, access to market) on the NSR can contribute to the development of international information and data exchange system for the NSR.

2. *The esteemed reviewers Mr. P.Morgan and Dr. T.Scovazzi propose to set forth more fully the paragraphs 1-3.*

We believe that as these paragraphs highlight the general position of Russia on the international trade region and take up a considerable space in the paper it would be unreasonable to set forth them in more detail.

3. *The esteemed reviewer Mr. Morgan proposes to highlight «the plane within the RF to develop 18 Sea Administration of Ports (page 13, at the top).*

The Sea Administration of Ports are being established in the joint-stock sea ports to manage the state property (berths, shore-based facilities). Up till now there are no joint-

stock ports in the Arctic. An incorporated «Sea Administration of Ports» has been only set up within the Chuckchee Autonomous Okrug.

4. *The esteemed reviewer Dr. T.Scovazzi has pointed out a number of mistakes in the terms and English translation.*

The authors have once again verified the text of the paper, all the mistakes defected in translation have been retrieved by SMA, the terms corrected.

5. On the whole, the revised version of the Working Paper does, in our view, corresponds to a greater extent to the goals of project IV.3.2.

A.Frolov

M.Khanin

I.Mikhina

25 May, 1998

The three main cooperating institutions of INSROP



Ship & Ocean Foundation (SOF), Tokyo, Japan.

SOF was established in 1975 as a non-profit organization to advance modernization and rationalization of Japan's shipbuilding and related industries, and to give assistance to non-profit organizations associated with these industries. SOF is provided with operation funds by the Sasakawa Foundation, the world's largest foundation operated with revenue from motorboat racing. An integral part of SOF, the Tsukuba Institute, carries out experimental research into ocean environment protection and ocean development.



Central Marine Research & Design Institute (CNIIMF), St. Petersburg, Russia.

CNIIMF was founded in 1929. The institute's research focus is applied and technological with four main goals: the improvement of merchant fleet efficiency; shipping safety; technical development of the merchant fleet; and design support for future fleet development. CNIIMF was a Russian state institution up to 1993, when it was converted into a stock-holding company.



The Fridtjof Nansen Institute (FNI), Lysaker, Norway.

FNI was founded in 1958 and is based at Polhøgda, the home of Fridtjof Nansen, famous Norwegian polar explorer, scientist, humanist and statesman. The institute specializes in applied social science research, with special focus on international resource and environmental management. In addition to INSROP, the research is organized in six integrated programmes. Typical of FNI research is a multi-disciplinary approach, entailing extensive cooperation with other research institutions both at home and abroad. The INSROP Secretariat is located at FNI.

