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**Committee of Experts on International  
Cooperation in Tax Matters  
Twenty-second session**

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Item 3(h) of the provisional agenda

**Environmental tax issues**

**Chapter 4A [Former Chapter 3A]: Basic elements in designing a carbon tax**

**Section 5.5.2. International Maritime Transport**

**Handbook on Carbon Taxation for Developing Countries**

**Note by the Secretariat**

**Section 5.5.2 (International Maritime Transport of Chapter 4A [Former Chapter 3A]: Basic elements in designing a carbon tax** of the Handbook on Carbon Taxation is presented to the Committee FOR DISCUSSION AND APPROVAL at its 22<sup>nd</sup> Session.

Chapter 4A was approved by the Committee at its 20<sup>th</sup> Session. During the 21<sup>st</sup> Session, the Coordinator of the Subcommittee informed the Committee that the UN International Maritime Organization (IMO) had provided some written comments (after the chapter's approval), specifically on its Section 5.5.2, which deals with International Maritime Transport. The comments revolved around some of the most recent work carried out by IMO, aimed at reducing carbon emissions in the maritime sector.

During the 21<sup>st</sup> Session, the Committee agreed on the Coordinator's proposal to amend the section in order to reflect the most updated and precise information on the work of IMO.

For easy reference and comparability with the approved version of Chapter 4A [former Chapter 3A] (E/C.18/2020/CRP.17), the text is presented in track mode.

## Chapter 4A [Former Chapter 3A]: Basic elements in designing a carbon tax

### Section 5.5.2. International Maritime Transport

112. Unlike the case of commercial air transport, there are no restrictions in international or tax law prohibiting or limiting a State's right to tax fuels used on cross-border maritime transport of goods and in high-sea fishing exploration.

113. There is, as of yet, no international agreement establishing a country's entitlement to tax carbon emissions (or fuel consumption) deriving from international maritime transport. Absent such international agreement, two different sets of international regulations may come into play: (i) the regulations issued by the International Maritime Organization ("IMO");<sup>1</sup> and (ii) the UN Convention on the Law of the Seas ("UNCLOS"), ~~which establishes a State's competence to regulate activities occurring in the high seas.~~<sup>2</sup> None of them specifically deal with economic instruments relating to carbon emissions, but there is nothing that prevents them from implementing economic policies such as carbon taxes to reduce carbon emissions.

#### *a) The Role of the IMO Convention*

114. The IMO was created in 1948<sup>1</sup> as a specialized UN agency, with the purpose of developing, administrating, and legally implementing international regulations and practices to be followed with the cooperation of Governments, in order to achieve the highest standards in matters concerning maritime safety, efficiency of navigation, and prevention and control of marine pollution from ships. The Marine Environmental Protection Committee was created to address environmental issues under IMO's remit.

~~115. — Given that the Kyoto Protocol specifically called on Annex I Parties to address emissions from shipping as part of their emissions reduction targets and following the admission of a more ample international framework for environmental protection through the Paris Agreement, in April 2018, the IMO decided to issue certain regulations with the aim to reduce the GHG emissions from international shipping transport to half the 2008 levels by 2050 which corresponds to a 50 % reduction. The IMO is continuously promoting technological innovation using the Energy Efficiency Design Index (EEDI) for new ships, which was made legitimate in 2011<sup>2</sup>. Since 1 January 2013, a new ship design needs to meet the EEDI for their ship type. This level is to be tightened incrementally 10 % every five years<sup>3</sup>.~~

~~115. The short and medium term measures to achieve IMO's CO<sub>2</sub> emission targets, however, need to be further developed and specified. The IMO has issued Mandatory energy efficiency standards for new ships (the Energy Efficiency Design Index (EEDI)) and mandatory operational~~

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<sup>1</sup> Initially named Inter-Governmental Maritime Consultative Organization (IMCO), in 1982 it changed its name to IMO.

<sup>2</sup> ~~This is also known as the "Initial IMO Strategy on Reduction of GHG Emissions from Ships".~~

<sup>3</sup> ~~An important measure to prevent pollution from oil tanker accidents, cleaning of oil tankers and disposal of engine room wastes is the 1973 International Convention for the Prevention of Pollution from ships, modified in 1978 (MARPOL 73/78). Annex VI of the MARPOL Convention, adopted in 1997 via an amending Protocol, regulates air pollution from ships.~~

measures to reduce emissions from all ships which have entered into force in 2013, as amendments to MARPOL Annex VI. By 2025, based on the EEDI phased approach, all new ships are expected, based on that legislation, to be 30% more energy efficient than those built before 2014.

116. In 2018, IMO adopted the Initial IMO Strategy on Reduction of GHG Emissions from Ships (Resolution MEPC.304(72)), aiming at reducing total GHG emissions from international shipping at least by 50% by 2050. To that purpose, the Strategy lists a number of candidate measures to reduce GHG emissions from international shipping. They do not, however, include carbon taxation.

~~116.117.~~ As mentioned, IMO's policies so far have only addressed mitigation techniques and efficiency improvements, rather than carbon taxation or market-based initiatives (such as emissions trading). Besides, the EEDI only applies to new ships, and since a ship's operational life ranges between twenty and twenty-five years on average, it is unlikely that energy efficiency standards would be sufficient to reduce CO<sub>2</sub> in the short- and medium-run. Even in the long-run, Smith et al. (2016) indicate that with the current designed EEDI, shipping's cumulative CO<sub>2</sub> emissions will be reduced by only 3% between 2010 and 2050. EIA (2017); and Smith et al. (2015, 2016)), in a study commissioned by IMO, predict that the EEDI regulation alone will not change the increasing trends of CO<sub>2</sub> and GHG emissions.

#### **b) *The role of the UNCLOS***

~~117.118.~~ The 1982 UNCLOS is responsible for codifying the rules applicable to activities on the high seas, by: 1) establishing an international legal order for the economic and scientific exploration of seas and oceans; (2) facilitating international communication; and (3) promoting the peaceful uses of the seas and oceans, equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment. Furthermore, the UNCLOS regulates every state's rights and obligations when lending a vessel, the national flag to navigate through the high seas or to promote an economic activity in international waters.

~~118.119.~~ UNCLOS, which was ratified by 166 parties (including the European Union, but not the United States), is a general convention and, as such, is compatible and may be subject to the provisions of other more specific conventions regulating, for example, environmental obligations-, and defining international taxing rights, provided that the *lex specialis* in question does not contravene the basic principles embodied in the Convention. The UNCLOS may thus interact with the Paris Agreement and the Kyoto Protocol, for example, when it comes to setting specific and higher standards for environmental protection for shipping operations.

#### **c) *Conclusion***

~~119.120.~~ The international maritime transport sector is not currently subject to the payment of any carbon tax or environmental charge. This has at least three adverse consequences. The *first* is a higher than optimal activity in international shipping (types of vessels, the routes they take, and the types of goods they transport), as it does not face the true global costs of international trade. The *second* is too high fuel consumption (and too polluting fuels) and consequently too high

carbon emissions<sup>4</sup> (see [Smith et al. \(2015\)](#)). The *third* is the lost opportunity of raising fiscal revenues raised from international shipping transport for countries participating in international trade, which are so critical for many low-income countries with low tax revenues.

~~120.121.~~ Absent an international environmental agreement to source and tax carbon emissions from international shipping, taxation of those emissions becomes a topic of exclusive competence of national States.

~~121.122.~~ The attribution of indirect taxing rights over activities occurring on the high seas is not a topic covered under international tax treaties or the UNCLOS. Regulatory environmental standards are within the competence of the flag state, but as tax is a specialized topic within the general field of environmental law, *lex specialis derogat lex generali*, and therefore it would be up to policy makers to define how taxing rights derived from global emissions could be allocated between states.

~~122.123.~~ Taxing carbon emissions would be consistent with the principle, consolidated in the UNCLOS, that the responsibility for the emissions released on the high seas should be shared by the larger international community<sup>5,2</sup> and with the IMO's guiding principle of non-discriminatory treatment of all ships regardless of the flag state. Extensive cooperation between all countries on this matter would represent a recognition of such responsibility and would be the first step allowing countries to reach an agreement on a global carbon tax scheme for the international shipping sector. The international community (including IMO) acknowledges that low-income countries (LICs) and small island developing states could be affected. To address any possible negative effects of implementing a carbon tax in the maritime sector may for example require to design a compensation scheme to the countries that are most affected.

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<sup>4</sup> Bunker fuel consists primarily of residual and distillate fuel oil (see [EIA \(2015\)](#)). Starting January 1, 2020, ~~the International Maritime Organization (IMO) will require~~IMO requires that all fuels used in ships contain no more than 0.5 percent sulfur. The cap is a significant reduction from the existing sulfur limit of 3.5 percent.