

經營學碩士 學位論文

**A Study on Chinese Shipping Policy Development
Trends after Joining the WTO
: Primarily on the Chinese Container Shipping**

WTO 加入 以後 中國 海運政策發展方向에 關한 研究
- 中國 컨테이너 海運을 中心으로 -

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< Content >

Abstract	ii
Chapter 1 Introduction	1
1.1 Background	1
1.2 Objective	2
1.3 Method and structure	3
Chapter 2 An Overview of Chinese Shipping Industry	5
2.1 Brief Introduction	5
2.2 Cargo Throughput at Chinese Ports	6
2.2.1 Fast Growth in Port Cargo Throughput	6
2.2.2 Fast Growth in Foreign-trade Cargo Throughput	7
2.2.3 Fast Growth in Container Throughput	8
2.2.4 Dry Bulk Cargo Accounting for most Port Throughput	8
2.3 Container Transport	9
2.4 Chinese International Shipping	13
2.5 International Container Shipping Service Provider	15
2.5.1 Foreign Shipping Service Providers	15
2.5.2 Domestic Shipping Service Providers	17
2.6 An Analysis of Chinese Container Shipping Industry	22
2.6.1 Porter's Diamond Model	22
2.6.2 Factor Conditions	24
2.6.3 Demand Conditions	26

2.6.4 Firm Strategy, Structure and Rivalry	28
2.6.5 Related and Supporting Industries	29
2.6.6 Government and Chance	32
Chapter 3 International Comparison of Shipping Policies	34
3.1 An Introduction to Shipping Policy	34
3.1.1 Background of Shipping Policy	34
3.1.2 Definitions of Shipping Policy	35
3.2 OECD Shipping Policy	36
3.2.1 Introduction of OECD	36
3.2.2 OECD Common Shipping Principles	38
3.3 WTO Shipping Policy	40
3.3.1 Introduction of WTO	40
3.3.2 General Obligation under GATS	42
3.4 EU Shipping Policy	44
3.4.1 Brussels Package	44
3.4.2 Maritime Package	47
3.4.3 Consortia Block Exemption	50
3.5 US Shipping Policy	52
3.5.1 Ocean Shipping Reform Act(OSRA)of 1998	53
3.5.2 Major Provisions of OSRA 1998	55
Chapter 4 Chinese Shipping Policy Before Joining the WTO	58
4.1 Chinese Shipping Policy (1949-1978)	58
4.1.1 Policies to Establish an International Shipping Business	58

4.1.2 Policy Measures for Developing the Shipping Industry	60
4.2 Chinese Shipping Policy (1978-2001)	63
4.2.1 Policy Measures for Shipbuilding and Purchasing	64
4.2.2 The Policy to Connect Transport Service	64
4.2.3 Auxiliary Services to Container Shipping Industry	66
Chapter 5 Chinese Shipping Policy After Joining the WTO	69
5.1 Shipping Policy	69
5.1.1 International Shipping Market Administration	69
5.1.2 Systematic Change in Domestic Shipping Administration	73
5.1.3 Reform and Standardization in the Domestic Shipping Market ..	74
5.2 Auxiliary Services to Container Shipping Industry	74
5.3 Transparency	76
5.3.1 Entry Requirement	76
5.3.2 Scope of Business	77
5.4 Impacts on Container Shipping Industry	80
5.5 Impacts on Foreign Shipping Services Providers	82
5.5.1 More Liberal Treatment of Foreign service Providers	83
5.5.2 A More Stable Environment for Investment	84
5.6 Problems with Chinese Container Shipping Policy	86
5.6.1 Market Access	86
5.6.2 Transparency	88
5.6.3 International Shipping Legislation Progress	89
5.6.4 The International Competitiveness	91

Chapter 6 Conclusion	93
References	100
Appendix	106

< List of Tables >

<Table 2-1> Top 10 Chinese Ports and Their Annual Container Throughput from 1998-2004 in China	7
<Table 2-2> World's Top 20 Container Ports in 2004	9
<Table 2-3> Total Value of Trade Volume of China	11
<Table 2-4> World's Fleet Assignment(number of ships)	12
<Table 2-5> World's Fleet Assignment(TEU)	12
<Table 2-6> Wholly Foreign-owned Shipping Companies in China	17
<Table 2-7> World's Top 20 Container Shipping Lines	21
<Table 5-1> Regulations on International Maritime Transportation	78
<Table 5-2> Scope of Business of International Shipping Agencies Services	79
<Table 5-3> Scope of Business of International Ship Management services	79

< List of Figures >

<Figure 2-1> Porter's Diamond Model	24
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Abstract

A Study on Chinese Shipping Policy Development Trends after
Joining the WTO
: Primarily on the Chinese Container Shipping

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With the rapid development of Chinese economy during the 1990's, especially after China joined the WTO at the end of 2001, in 2004, Chinese foreign trade continues to grow at a surprisingly rate. The tremendous growth of the economy and foreign trade has resulted in a rapid increase of Chinese shipping industry.

The purpose of this study is to examine the international competitiveness of Chinese shipping industry, describe Chinese shipping policy development trends after China joining the WTO, primarily on Chinese container shipping industry. In particular what is the real impact of Chinese WTO accession on Chinese container industry and foreign shipping companies?

This paper is a result of a literature research on shipping policies. The research methodologies used in this study are as follows:

Firstly, Porter's Diamond Model was adopted analyze Chinese Shipping Company's international competitiveness advantage.

Secondly, literature survey on shipping policy and comparing with the E.U and the U.S Shipping policies.

Lastly, an analysis of the historical development of Chinese Shipping policy, and a discussion of the impacts on Chinese container shipping industry and foreign shipping service providers after China joined the WTO.

The final results and conclusions are found to be as follows:

(1) In order to enhance Chinese international shipping competitiveness, China should speed up the construction of maritime transport infrastructure facilities, provide more efficient and better service for Chinese and foreign shipping companies.

(2) China must accelerate the shipping legislation and standard shipping market, step up the market institutionalization to impose supervision on the market entry and market behavior of foreign companies in accordance with the Chinese laws and regulations.

(3) As a full member of the WTO, the Chinese government should further open up to the outside of world, provide more stable and liberal environment for foreign shipping companies. In the future Chinese shipping policy will be more open and transparent to welcome foreign investors to make investments in Chinese shipping industry.

Also to enhance competitiveness, Some suggestions for Chinese shipping companies are founded as follows;

(1) Chinese shipping companies should develop inter-modal transport; provide more efficient and faster inter-modal connection to the hinterland of China.

(2) Also Chinese shipping companies must reasonably adjust their own internal organization by abolishing useless department and separate the administration from Chinese government, develop market-oriented modern strategies.

(3) In order to go with the tide of globalization and to compete with more and more transnational liner shipping companies, Chinese liner shipping companies should take action on "Weak-Strong M&A and Strong-Strong Consolidation" strategy.

(4) The shipping industry is a kind of service industry. The service with high quality, efficiency and economy is the key to win market

share. With Chinese accession into the WTO, the market competition will be more severe, Chinese container shipping companies could do is only to provide more attractive and higher quality service.

국 문 초 록

1990년대 중국경제의 급속한 발전과 특히 2001년 말 중국의 WTO 가입 이후 2004년도 중국의 해외무역은 놀라운 성장을 지속하였다. 중국경제와 해외무역의 급속한 성장은 중국해운산업에도 커다란 영향을 미쳐 해상물동량과 선복량의 급격한 팽창과 항만시설의 확충 등으로 이어졌다.

본 연구의 목적은 중국해운의 국제경쟁력을 살펴보고, WTO 가입 이후 중국해운 정책의 발전 추세를 컨테이너 해운을 중심으로 분석한다. 특히 중국의 WTO 가입이 중국 해운산업과 외국해운기업에 미친 영향을 분석한다.

본 논문은 해운정책에 관한 기초의 2차적 자료를 중심으로 문헌 연구를 하였다. 본 논문의 구체적인 연구방법은 다음과 같다.

첫째, 중국 해운기업의 국제 경쟁력을 포터(Porter)의 산업경쟁 분석모형을 이용하여 분석하였다.

둘째, 해운정책에 관한 문헌조사를 통하여 유럽과 미국 해운정책을 비교 분석하였다.

마지막으로, 중국 해운정책의 발전 과정을 역사적으로 분석하였으며 WTO 가입 이후 중국 정기선 해운과 외국해운기업에 미친

영향에 관하여 고찰하였다. 본 연구의 결과는 다음과 같다.

- (1) 중국의 국제해운 경쟁력을 강화하기 위하여 중국은 해상운송의 하부구조물과 시설의 건설에 박차를 가하고, 중국과 외국 해운기업에 보다 효율적이고 향상된 서비스를 제공하여야 한다.
- (2) 중국은 해운관련 법규와 표준 해운시장 형성을 가속화 하여야 하고 외국기업의 시장 진입과 시장행동이 중국법과 규칙에 의거 이루어질 수 있도록 시장관리를 감독하기 위한 시장 제도를 구축해야 한다.
- (3) WTO 회원국으로서, 중국 정부는 해외시장에 더 많은 개방을 하여야 하고 외국해운기업이 안정적이고 자유로운 국제 활동을 할 수 있는 환경을 제공하여야 한다. 미래의 중국 해운정책은 해외 투자자가 중국 해운산업에 투자할 수 있도록 더 개방적이고 투명해져야 할 것이다.

중국 해운기업의 경쟁력 제고를 위한 몇 가지 제안은 다음과 같다.

- (1) 중국해운기업은 일단 복합운송을 개발하여야 한다. 중국 배후 지역과 보다 효율적이고 빠른 복합운송의 연결고리를 제공하여야 한다.
- (2) 또한 중국해운기업은 불필요한 부서를 폐지함으로써 내부 조직을 합리적으로 조정하고, 중국정부의 관리에서 벗어나 시장 지향적인 현대적인 전략을 개발하여야 한다.
- (3) 글로벌화에 발맞추고 다국적 정기선 해운기업과 경쟁하기 위

하여, 중국 정기선 해운기업은 우량기업과 부실기업간의 M&A, 우량기업간의 연합과 같은 전략을 취해야한다.

- (4) 해운산업은 일종의 서비스 산업이다. 고품질 서비스, 높은 효율성과 경제성은 시장점유율 획득의 핵심이다. 중국의 WTO 가입으로 시장경쟁이 보다 강화될 것이며, 중국 정기선 해운기업은 보다 더 매력적이고 높은 품질의 서비스를 제공해야만 한다.

Chapter. 1

Introduction

1.1 Background

World shipping industry has been undergoing structural changes over last decade and the changed map has never been clearer than today. One of the most notable features of the changes is that, Asia, especially East Asia, has overwhelmingly become the powerhouse of the world's shipping business as the largest importer of raw materials and the largest exporter of manufactured goods. Though Asia's GDP figure is smaller than the combined GDP of the US and the European Union, and if excluding Japan the region's economic scale is much smaller, this region consumes more raw materials and produces more manufactured products than either of them. In shipping, the volume rather than value matters.

After witnessing a decade of continuously strong growth in China during the 1990s, especially after China joined the WTO (World Trade Organization), in 2004, Chinese foreign trade continues to grow at a surprisingly high rate of over 36 percent continuing into this year. Chinese GDP has maintained an average annual growth rate of 9.4% for the past 25 years. Chinese aggregate economy now ranks 3rd in the world. The tremendous growth of the economy and trade has resulted in a rapid increase of shipping.

Recently demand in Chinese maritime transport market has been heated. The seaborne volume of some major cargoes such as containers, iron ore and crude oil has increased dramatically, and port throughput is also rapidly rising. In 2004, container throughput of the mainland China ports reached 61.6 million TEUs, ranking No.1 in the world¹⁾.

From January through March 2005, total waterway cargo was 847 million tons, an increase of 16.5% from the same period in 2004. The container volume of cargoes handled maintained a rapid rate of 24% growth. With the acceleration of integration into the world economy and the continuous rapid development of the Chinese economy and foreign trade, China has become one of the most important and dynamic shipping markets in the world²⁾.

1.2 Objective

Since the accession to the WTO, the Chinese government has been fully fulfilling its commitments on international maritime transport services, continually opening its markets to the outside world, and actively participating in bilateral and multilateral maritime transport cooperation and exchanges. Chinese shipping policies have been gradually opened, and the market competition mechanism is being gradually improved. In the meantime, foreign investors are permitted

1) MOC, "The Report On Chinese Shipping Development, 2004"

2) www.snet.com.cn

to make investments in China in the construction of port facilities and in the operation of stevedoring activities, and to invest in operating international maritime transport and related auxiliary business activities. Overseas shipping companies have long been waiting for the day when China entered the WTO, because they are certain that Chinese WTO accession will provide tremendous commercial opportunities. But barriers still persist in the new system. The objective of this study is examining the international competitiveness of Chinese Shipping Industry, describe Chinese shipping policy development trends after China joined the WTO. In particular what is the real impact of Chinese WTO accession on foreign shipping operators?

1.3 Methods and Structure

This paper is a result of a literature research on shipping policies and Porter's Diamond Model was used to analyze Chinese Shipping Company's international competitiveness advantage, comparing the E.U and the U.S Shipping policies, an analysis of the historical development of Chinese Shipping policy, a discussion of possible future development trends of Chinese shipping policy and the Chinese shipping industry. This study also presents some suggestions for Chinese Shipping Firms to strengthen international competitiveness and to enhance comparative advantages in the world shipping market.

This paper includes five chapters:

Chapter 1 depicts the background and purpose of the study and briefly introduces the research methodology and outline of the thesis.

Chapter 2 reviews the Chinese Shipping Industry, This chapter is divided into six parts and gives the brief introduction of Chinese Shipping Industry's present and an analysis of Chinese Shipping Industry by use of Porter's Diamond Model.

Chapter 3 provides a theoretical background on shipping policy. It also introduces the OECD and the WTO principles of shipping policy comparing with the U.S and the EU shipping policies.

Chapter 4 focuses on the historical development of the Chinese shipping policy. This chapter include two parts which shows Chinese Shipping policy 1949 - 1978 and Chinese shipping policy 1978 - 2001.

Chapter 5 is an analysis of Chinese shipping policy after joining the WTO. Impacts of this change on Chinese container shipping industry and foreign shipping service providers, and the last are problems on Chinese container shipping industry.

Chapter 6 is the conclusion of the study.

Chapter 2

An Overview of Chinese Shipping Industry

2.1 Brief Introduction

There are 1,467 ports in China, including 165 seaports and 1,302 river ports. Currently, over 90 percent of Chinese foreign trade and half of the country's domestic transport go through shipping. Till the end of 2002, the coastal ports have already established 3260 berths of more than thousand tons' level, including 696 deep-water berths. The whole handling capacity reached 1.5 billion tons. The port construction, especially the construction of large professional container wharfs and bulk docks, has pushed China's foreign trade and national economy forward considerably³⁾.

All the main coastal ports in China can be divided into three basic sections: the northern ports group centered on Tianjing, Dalian, and Qingdao ports are serviced by the ports of Yingkou, Qinhuangdao, Yantai and other ports; the central ports group centered on the Shanghai port which is serviced by Ningbo, Lianyungang, Nantong, Zhangjiagang and other Yangtze River Delta ports; the southern ports group centered on Hong Kong, Guangzhou and Shenzhen ports that are serviced by other Pearl River Delta ports.

3) www.moc.gov.cn

The rapid development of the National economy and foreign trade in 2004 and the unprecedented boom in Chinese waterway cargo transport has resulted cargo transport volume, cargo turnover and port throughput all growing rapidly.

2.2 Cargo Throughput at Chinese Ports

The transport demand for coal, crude oil, ore and other major cargo remain strong. The throughput of domestic-trade and foreign trade cargo at coastal and river ports surged, and many ports operated over-capacity. For the first time China became No.1 in the world in terms of cargo throughput in 2004⁴).

2.2.1 Fast Growth in Port Cargo Throughput

In 2004, the port cargo throughput increased 26.6% to 4.17 billion tons. 2.54 billion tons were handled at coastal ports, up 23% over the previous year; and 1.634 billion tons were handled at river ports, up 32.5%⁵).

Eight ports in China have continuously exceeded 100 million tons of annual throughput since 2001. Shanghai is leader of the eight ports, followed by Shenzhen, Qingdao, Ningbo, Tianjin, Guangzhou,

4) MOC, "The Report On Chinese Shipping Development 2004"

5) Ibid

Qinhuangdao and Dalian. The eight ports total cargo throughput is 1.62 billion tons in 2004, up 20.3% over 2003, accounting for 64% of coastal port throughputs. Shanghai, the biggest port in China, alone handled 379 million tons, making it the Second largest port in the World Port List for 2004⁶⁾.

<Table 2-1>The top ten ports and their annual container throughput from 1998-2004 (Unit: ten thousand TEUs)

Rank	1998	1999	2000	2001	2002	2003	2004	03/04 Growth
1	Shanghai 306.58	Shanghai 421.6	Shanghai 561.20	Shanghai 633.99	Shanghai 861	Shanghai 1128,2	Shanghai 1455,7	29%
2	Shenzhen 195.2	Shenzhen 297.8	Shenzhen 395.94	Shenzhen 507.86	Shenzhen 761.37	Shenzhen 1065.0	Shenzhen 1365.0	28.2%
3	Qingdao 121.3	Qingdao 154.3	Qingdao 211.63	Qingdao 263.85	Qingdao 330	Qingdao 423.9	Qingdao 513.9	24.3%
4	Tianjing 101.8	Tianjing 130.2	Tianjin 170.84	Tianjin 201.10	Tianjin 240.8	Tianjin 301.5	Ningbo 400.5	44.5%
5	Guangzhou 84.1	Guangzhou 117.9	Guangzhou 142.67	Guangzhou 162.83	Guangzhou 218	Ningbo 277.2	Tianjin 381.4	26%
6	Xiamen 65.4	Xiamen 84.8	Xiamen 108.46	Xiamen 129.48	Xiamen 185.8	Guangzhou 276.9	Guangzhou 330.8	19.4%
7	Dalian 62.6	Dalian 73.6	Dalian 100.84	Ningbo 121.31	Xiamen 175.4	Xiamen 233.1	Xiamen 287.1	23%
8	Zhoushan 38.4	Ningbo 60.1	Ningbo 90.21	Dalian 120.89	Dalian 135.2	Dalian 167.0	Dalian 221.1	32%
9	Ningbo 35.3	Zhougshan 43	Zhougshan 45.76	Zhougshan 54.64	Zhougshan 62	Zhougshan 75.5	Zhougshan 92.1	21%
10	Zhuhai 26.2	Fuzhou 31.8	Fuzhou 39.98	Fuzhou 41.76	Fuzhou 48	Fuzhou 59.8	Fuzhou 70.7	18%

Source: *business.sohu.com.cn* and www.ci-online.co.uk

2.2.2 Fast Growth in Foreign-trade Cargo Throughput

Thanks to the rapid development of Chinese foreign trade, Chinese

6) Ibid

foreign-trade cargo throughput increased 18.9% to 1150 million tons. And 1056 million tons were handled at coastal ports, up by 19.4%, and 99 million tons at river ports, up by 13.7%⁷⁾.

2.2.3 Fast Growth in Container Throughput

Shanghai and Shenzhen topped 10 million TEUs, becoming No.3 and No.4 respectively in the world. Also Chinese container throughput increased 26.6% to 61.60 million TEUs, 56.62 million TEUs handled at coastal ports, up 27.1%, and 4.98 million TEUs were handled at river ports, up 20.9% over the previous year⁸⁾.

2.2.4 Dry Bulk Cargo Accounting for Most Port Throughput

The dry bulk cargo throughput in 2004 was 2.335 billion tons, up 31.5% from the 2003 figure; the liquid bulk cargo throughput was 540 million tons, up 18.7%, the break bulk cargo throughput was 559 million tons, up 15.7%, the container throughput was 551 million tons, up 25.4%, and the Ro/Ro vehicle throughput was 187 million tons, up 30.1%. The dry bulk cargo, liquid bulk cargo, break bulk cargo, container, and Ro/Ro vehicles accounted for 56%, 12.9%, 13.4%, 13.2% and 4.5% respectively in the total cargo throughput at ports⁹⁾.

7) Ibid

8) Ibid

9) Ibid

<Table 2-2> World's top 20 container ports in 2004

World Ranking	Port	Country	Total TEU	up from 2003 year
1	Hong Kong	China	21,984,000	6.8%
2	Singapore	Singapore	20,600,000	8.7%
3	Shanghai	China	14,557,200	29%
4	Shenzhen	China	13,650,000	28.2%
5	Busan	South Korea	11,430,000	9.7%
6	Kaohsiung	Taiwan China	9,710,000	4.1%
7	Rotterdam	Netherlands	8,281,000	17.5%
8	Los Angeles	U.S.A	7,321,440	9.4%
9	Hamburg	Germany	7,003,479	15.5%
10	Dubai	United Arab Emirates	6,428,883	14.3%
11	Anterwerp	Belgium	6,063,746	22.9%
12	Long Beach	U.S.A	5,779,852	2.9%
13	Port Klang	Malaysia	5,243,593	15.3%
14	Qingdao	China	5,139,700	24.3%
15	New York/New Jersey	U.S.A	4,478,480	10.1%
16	Tanjung Pelepas	Malaysia	4,020,421	15.3%
17	Ningbo	China	4,005,500	44.5%
18	Tianjin	China	3,814,000	26.5
19	Laem Chabang	Thailand	3,624,000	13.9%
20	Bremen/Bremerhaven	Germany	3,469,104	8.0%

Source: www.ci-online.co.uk

2.3 Container Transport

Since China began its the open market and reform policies at the end of the 1970s, foreign trade expanded continuously and rapidly. From the data in <Table 2-6>, we can see that the total value of

trade considerably increased every year except 1998. Because of the Asian Financial Crisis, the trade volume made a small decline in year 1998. But the big increase of 11.3 percent in 1999 demonstrated that China has walked successfully its way out of the Asian Financial Crisis more quickly than expected. Also we can see from the table, the last two years of Chinese foreign trade growth rates are especially faster than previous year, at an average rate of 35%¹⁰).

Bolstered by the continuous growth of foreign trade, Chinese shipping industry has achieved positive growth rates too. During two recent five-year economic plans in China, i.e., the period of 1991-1995 and 1996-2000, sea cargo transport increased annually at an average rate of 8% in the first period and 10% in the second.

10) Ibid

<Table 2-3> Total Value of Trade Volume(unit: 1 million US \$)

Year	Trade Volume	Export Volume	Import Volume	The increase of trade volume compared with the previous year (%)		
				Trade Volume	Export volume	Import Volume
1990	115,437	62,091	53,345	3.4	18.2	-9.8
1991	135,702	71,910	63,791	17.6	15.8	19.6
1992	165,525	84,940	80,585	22.0	15.8	19.6
1993	195,703	91,744	103,959	18.2	8.0	29.0
1994	236,621	121,006	115,615	20.9	21.9	11.2
1995	280,863	148,780	132,084	18.7	23.0	14.2
1996	289,881	151,048	138,833	3.2	1.5	5.1
1997	325,162	182,792	142,370	12.2	21.0	2.5
1998	323,949	183,712	140,237	-0.4	0.5	-1.5
1999	360,630	194,931	165,699	11.3	6.1	18.2
2000	474,297	249,203	225,094	31.5	27.8	35.8
2001	509,680	266,206	243,474	7.5	6.8	8.2
2002	620,790	325,570	295,220	21.8	22.3	21.2
2003	851,210	438,370	412,840	37.1	34.6	39.9
2004	1154,800	593,400	561,400	35.7	35.4	36

Source: China Customs Statistical Data, Annual Report

Over the past decade, Chinese container shipping sector has developed rapidly and continuously. There are more than 150 shipping companies involved in container liner shipping routes, now China is the country with the largest number of deployed container ships and the largest container carrying capacity in the world (See the Table 2-4 and Table 2-5).

<Table 2-4> Fleet Assignment (Number of ships)

Rank	Country	Ships
1	China	1228
2	Hong Kong, China	1166
3	United States	1074
4	Singapore	916
5	United Kingdom	861
6	Germany	810
7	Netherlands	785
8	Belgium	774
9	Japan	756
10	Korea, Republic of	734

Source: www.ci-online.co.uk July, 2004

<Table 2-5> Fleet Assignment (TEU)

Rank	Country	TEU
1	China	3 928 913
2	Hong Kong, China	3 749 697
3	United States	2 978 193
4	Singapore	2 471 635
5	Germany	2 249 857
6	United Kingdom	2 169 336
7	Korea, Republic of	2 110 367
8	Netherlands	2 083 832
9	Taiwan, Province of China	1 957 434
10	Japan	1 926 790

Source: www.ci-online.co.uk July, 2004

Chinese international marine transportation has built a relationship with more than 150 countries and regions in the world. The container ocean lines can be divided into four groups:

1. East Routes: Japan and across the Pacific to the ports of America.
2. South Routes: South East Asia, Oceanic etc.
3. West Routes: South East Asia, South Asia, West Asia, Africa and Europe.
4. North Routes: Korea, Russia and Far East

The total number of Chinese international trade lines is maintaining a steady climb. It will see a prominent increase of cargo volume in the US trade Europe service and intra-Asia trading lines. According to a forecast by Chinese Waterborne Transportation Association in a research report, China should become the world's largest container shipping centre around 2010, and the throughput of containers at the ports will reach 108 million TEUs, with 80-85 million TEUs of foreign trade volume.

2.4 Chinese International Shipping

International shipping is vital to the trade-oriented economy of China, and it plays an important role in national economic development. During the early 1960s, China had less than thirty ships engaged in international transport. The maritime shipping capabilities increased greatly in the 1970s and 1980s. In 1985, China established eleven

shipping offices and jointly-operated shipping companies in foreign countries. In 1986 China ranked ninth in world shipping with more than 600 ships and a total tonnage of 16 million, including modern roll-on and roll-off ships, container ships, large bulk carriers, refrigerator ships, oil tankers, and multipurpose ships. The fleet called at more than 400 ports in more than 100 countries. At present, there are 230,000 cargo ships with carrying capacity of over 50 million tons and a total of 90 percent of foreign trade, which forms 44 percent of the country's national economy, transported via the sea.

Although the international shipping industry began at a rather late stage and from a low level, it has grown remarkably and become a new growth point for Chinese fast-developing economy. Latest statistics show Chinese total foreign trade volume last year surged 35.7%, reaching US\$1154.7 billion, among which exports rose 35.4% and imports 36%, the overall shipping tonnage kept an increase about 8-10% every year¹¹⁾.

The following factors can be concluded as the dominant drivers for overall for growth in the Chinese international shipping industry¹²⁾.

1) Organic growth where China is taking market share from other Asian locations, because of its overall competitiveness. The relocation of Japanese, South Korean and Taiwanese,

11) Ibid

12) www.chinadaily.com.cn

manufacturing companies are good examples.

- 2) The enormous speed of Chinese economic growth is the real powerhouse for the industry.
- 3) The alteration in models of transport such as the containerization of bulk cargoes.
- 4) The shift in transport mode from Hong Kong to South China.

Because of the simple fact that it will help the shipper to reduce the transport cost greatly by shipping the goods via the mainland seaports in South China.

The significance of Chinese shipping is growing and the nation will continue to play an important role in the global industry, especially now that it is a member of the WTO. Since 90% of Chinese foreign trade volume is shipped out by sea, experts agree that, with the increase of imports and exports. Chinese seaborne foreign trade volume is expected to increase by eight percent to ten percent, from 393 million tons in 1998 to 656 million tons in 2005. But to meet the challenges from foreign counterparts, Chinese shipping industry still has a long way to go.

2.5 International Container Shipping Service Providers

2.5.1 Foreign Shipping Companies

The Chinese market is becoming vital for shipping lines all over the

world. Chinese government authorities also encourage foreigners to invest in the maritime and logistics industries. Since the first foreign ship docked at a Chinese port in 1984, a few major shipping liners continued to expand their businesses in China, not only increase the service coverage and deployment of additional slot capacities, but also speed up their investment in inland areas and river ports. By 2004, foreign shipping companies had set up 1100 representative offices on the mainland of China, and there are 27 wholly foreign-owned shipping companies in China. There are 8 wholly foreign-owned container liner companies and 51 branches in 2004¹³⁾.

Chinese admission to its ports has been at a comparable level to world development. International shipping transport can fully enjoy the same treatment as Chinese companies. So far, foreign shipping companies have made up 47.5% of the near-ocean-going vessels and 70% of the ocean-going ships sailing from the ports of China every month. In China's foreign trade transport, the market share of Chinese carriers has dropped down from over 60% at the end of 1980s to 40% at present and the market share of container transport has dropped from 50% at the beginning of the 1990s to 30% by now.

It is obvious that Chinese international shipping service has become a widely opened and deeply competitive industry. The competition between shipping lines in China is a major advantage of the

13) MOC, "The Report On Chinese Shipping Development, 2004"

international container-shipping market, which drives rates down and improves service quality. Market share of major shipping lines changes each year, here are the top 10 shipping lines of China.

<Table 2-6> Wholly foreign-owned shipping companies in China
(Dec, 2004)

No	Company name	Place of registration	place of parent registration	Number of Subsidiaries
1	Maersk (China) Shipping Co., Ltd	Beijing	Denmark	14
2	APL(China) Co., Ltd	Beijing	USA	14
3	OOCL(China) Co., Ltd	Shanghai	Hongkong, China	13
4	NYK Line(China) Co., Ltd	Shanghai	Japan	8
5	PIL (China) Co., Ltd	Beijing	Singapore	8
6	P&O Nedlloyd(China) Co., Ltd	Shanghai	Netherland	6
7	Hanjin Shipping (China) Co., Ltd	Shanghai	Korea	6
8	CMA CGM(China) Co., Ltd	Shanghai	France	5
9	Hyundai Merchant Marine(China) Co., Ltd	Shanghai	Korea	4
10	Hapag-Lloyd(China) Co., Ltd	Shanghai	Germany	4

Source: MOC, "The Report On Chinese Shipping Development, 2004"

2.5.2 Domestic Shipping Companies

COSCO

Founded on April 27, 1961 as the pioneer of international shipping

carrier in China, together with the reconstruction of national transportation resources on February 16, 1993, China Ocean Shipping (Group) Company (COSCO) has grown into a \$17 billion corporation by clearly focusing on the goal of enabling commerce around the globe. It is an international giant, specializing in shipping and modern logistics, serving as a shipping agency and providing services in freight forwarding, shipbuilding, ship repairing, terminal operation, trade, financing, real estate and IT industry as well, with an aim to take a leading roles in these areas. Today, followed by more than 40 years of arduous efforts, COSCO has successfully molded itself into a global company with one of the most recognized and admired brand names in the world. As far as the fleet capacity is concerned, COSCO now owns and operates a variety of merchant fleets of some 600 vessels with a total carrying capacity of up to 35 million DWT, achieving an annual traffic volume of more than 270 million tons¹⁴⁾.

Born from the merger of COSCO Container Division with COSCO Shanghai on January 27th, 1997 in Shanghai China, China Container Lines Co., Ltd.(COSCON) is a key company specializing in container transport under the COSCO Group. Now it is the 8th largest Container shipping company in the world. COSCON's business scope ranges from international to domestic container transport by sea, space booking, ship's chartering, shipping agency, ship's trade, ship's provision and bunkers, to other shipping-related businesses, on shore enterprises, warehousing and multi-modal transport.

14) www.cosco.com

COSCO currently owns and operates over 120 container vessels totaling roughly 275,000 TEUs. The annual turnover is unto 4 million TEUs, accounting for 4.2% of the total global share. In Mainland of China, an intranet service web with more than 300 freight organizations affiliated to COSCO covers all the railway hubs, international airports and major coastal ports. Beyond China, COSCO has woven a huge global container service network, which consists of more than 1000 agencies, spanning almost all global transport hubs and dynamic economic areas.

China Shipping

China Shipping Group (China Shipping) was founded on July 1st, 1997, in Shanghai, China. It is the second largest ship owner and one of the 44 key state-owned enterprises under the direct administration of the Central Government of China. China Shipping operates five specialized shipping fleets of oil tankers, tramps, passenger ships, container vessels and special cargo ships, respectively, comprising 341 vessels with an aggregate deadweight of 8.89 million tones. It also runs diversified businesses of integrated logistics, terminal management, finance and investment, engineering and labor service, supply and trading, and information technology¹⁵⁾.

China Shipping Container Lines (CSCL) is a specialized corporation

15) www.cnshipping.com

affiliated to China Shipping (Group) Company, involved in container liner and other relative service in storage, transshipment, custom clearance and other services.

China Shipping now owns a fleet of 107 vessels with a total capacity of approximately 322,520 TEUs. From recent statistics we can see CSCL is the 7th largest container shipping lines in the world(See the Table 2-9). The company has formed a network covering the main ports of China, Japan, Korea, Southeast Asia, and Europe. The domestic coastal transportation covers 11 ports from South China to North China, providing an economic, efficient and rapid service for its customers. In addition, CSCL is expanding its fleet by the deployment of long-term chartered tonnage, including containerships of 9,500 TEU in size.

<Table 2-7> World's Top 20 Container Shipping Lines
(1st September, 2005)

Company	Rank	Total Fleet		Order Book		Country
		TEU	Ships	TEU	Ships	
World Fleet	0	9,578,275	7,774	4,380,045	1,158	
Maersk Sealand	1	901,156	319	471,207	92	Denmark
MSC	2	708,208	263	299,424	40	Switzerland
PONL	3	471,225	156	183,615	30	UK
CMA CGM	4	374,032	132	356,350	66	France
Evergreen	5	335,414	119	38,616	6	Taiwan, China
APL	6	322,520	106	111,106	30	U.S.A
CSCL	7	300,535	107	213,666	35	China
COSCO	8	299,961	116	223,283	27	China
Hanjin	9	291,325	74	74,365	11	South Korea
NYK	10	253,348	80	138,500	24	Japan
OOCL	11	236,018	68	109,504	19	Hongkong, China
MOL	12	226,105	72	122,400	19	Japan
K Line	13	219,560	74	64,614	10	Japan
HLCL	14	215,694	57	68,900	8	Germany
Yang Ming	15	189,939	68	123,430	28	Taiwan, China
CP Ships	16	179,209	76	38,277	9	UK
Zim	17	160,023	57	17,000	4	Israel
Hamburg Sub	18	142,613	62	53,062	17	Germany
HMM	19	142,257	37	125,200	20	South Korea
PIL	20	111,839	67	60,538	22	Singapore

Source: www.ci-online.co.uk

2.6 An Analysis of Chinese Container Shipping Industry

2.6.1 Porter's Diamond Model

Michael Porter had a lasting influence on “competitive advantage” analysis with his Diamond Model on industry level and on global level. The model is widely used for industry analysis.

The nature of competition and the sources of competitive advantage differ widely among industries and even industry segments. As can be seen from the figure, four attributes of a nation comprise Porter's Diamond of national advantage. They are firm strategy, structure and rivalry; factor conditions, related and supporting industries, and demand conditions. The government and chance also play an important role in Porter's diamond model.

1) Factor Conditions

Factor conditions refers to inputs used as factors of production - such as labor, land, natural resources, capital and infrastructure. The specialized factors are created, not inherited. Specialized factors of production are skilled labor, capital and infrastructure.

2) Demand Conditions

A sophisticated domestic market is an important element to producing competitiveness. Because the market demands high quality and a close proximity to such consumer enables the firm to better

understand the needs and desires.

3) Related and Supporting Industries

A set of strong related and supporting industries is important to the competitiveness of firms. This includes suppliers and related industries. The phenomenon of competitors (and upstream and/or downstream industries) locating in the same area is known as clustering or agglomeration.

4) Firm Strategy, Structure and Rivalry

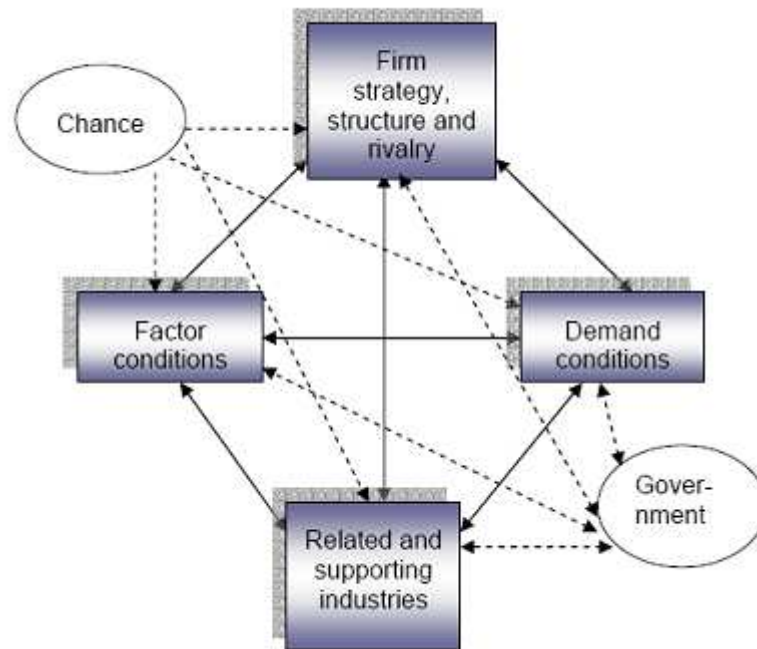
Countries with a long run outlook will tend to be more competitive in industries where investment is long term. Regarding to structure, the best management styles vary among industries. Some countries may be oriented toward a particular style of management. With international competition, there are enough differences between companies and their environments.

5) Government and Chances

Governments can influence all four of Porter's determinants through a variety of actions. Moreover, Porter has emphasized the role of chance in the model. Random events can either benefit or harm a firm's competitive position.¹⁶⁾

16) Michael E, Porter, *The Competitive Advantage of Nations* The Free Press, New York, 1990.

<Figure 2-1> Porter's Diamond Model



Source: Michael. E, Porter, "The Competitive Advantage of Nations", 1990, p127.

2.6.2 Factor Conditions

Chinese shipping industry has become a pillar industry for the nation and a mainstay on international markets. China has over 18,000 km of coastline and 14,000 km of island coasts with abundant maritime resources. China also has a large inland waterway network which links the whole country both from east west and north south. The Yangtze River, Chinese longest river, with a total of 70,000 kilometers of waterways open to shipping on its mainstream and 3,600 kilometers on its tributaries, became the nation's busiest

shipping lane, carrying 72 percent of Chinese total waterborne traffic.

Despite Chinese long coastline and enormous hinterland, its transport infrastructure is weak. The shortage of transport capacity is a long-standing problem in China; there are no adequate transport links between interior regions and gateway cities. Trucking services are of low quality, partly due to the equipment but mainly to the quality of the highways, most of which were originally designed for local traffic and do not accommodate tractor trailers easily. The lack of rail capacity is the most critical element for moving cargo to and from inland destinations. Further, their service is often irregular and poor. In the inland areas, there are few container freight stations, yards and trucks.¹⁷⁾

China enjoys the competitive advantage in cheap labor. The average labor cost in China will be about five percent of those in the developed country. Also compared to other countries in the Far East area, such as Japan and South Korea, the labor cost in China is much lower and this situation will last at least two decades. On the other hand, every year at least 2.5 million college students graduate in China. They are expected to enter the country's labor market incrementally in the coming years. This high quality but relatively cheap labor force will help Chinese shipping industry maintain its rapid growth in the future.¹⁸⁾

17) www.jctrans.com.cn

18) www.sina.com.cn

2.6.3 Demand Conditions

With a 35% growth in exports in 2004 to a total of USD 593 billion, China relies heavily on international shipping as the vehicle for the country's growth. It is estimated that more than 15 percent of Chinese Gross Domestic Product (GDP) can be attributed to the overall shipping industry (ship-owners, shipbuilding & shipping services).¹⁹⁾

By entering WTO, China will become the world manufacture centre within 5-10 years. More than half of top 500 world enterprises have set up joint venture/mono-owned venture in China. The foreign trade volume carried by sea will increase, the trans-shipments in various trade lanes will climb up to some extent. With a 35% growth in exports in 2004 to a total of USD 593 billion, China relies heavily on international shipping as the vehicle for the country's growth. This large increase in the shipping demand will also provide an excellent opportunity for Chinese international shipping industry.

As China increasingly integrates in world trade, its comparative advantage will need to be based on the quality of its services, such as good order-to-door cycle time, door-to-door reliable transport, competitive transaction costs, and minimum losses in transit. However, the intermodal transport system in China is not integrated. The growth of exports and the use of containers have largely been limited

19) www.marinemoney.com

to the coastal areas and associated with ocean-going shipping: Over 92 percent of seaborne containers do not travel beyond the coastal provinces, unlike the coastal cities, which have a full contingent of container freight stations, trucks and empty containers. Inland provinces lack container handling facilities and equipment. Thus, inland shippers have to wait for empty containers to be sent from the coast to the interior, which adds to the time and costs. As a result, the benefits of container transport, as a means for door-to-door or dock-to-dock transport, have yet to be realized in these localities.

Repeated cross-border inspections for container transport also cause negative effect. Although cross-border inspections have improved since the mid-1980s, they still delay containers at points of entry. Repeated inspections by different agencies often cause frustration to exporters and importers. The inconsistent application of regulations has confused foreign shippers and delays the process. Cumbersome customs procedures for bonded transit to inland destinations discourage importers to clear their cargo at inland locations, perpetuating the practice of opening containers for customs clearance both at port areas and again at inland destinations for discharging containers.

Indeed, if an efficient inland container transport system could be developed, the price of exporting and importing goods could be reduced by 2 percent-6 percent. Although these figures appear small, they are large enough to significantly affect the exporters' competitiveness in tight markets.

2.6.4 Firm Strategy, Structure and Rivalry

As discussed above in the Review of the Chinese shipping industry, currently there are 310 shipping companies registered in China and engaged in international shipping, and most of them except COSCO, China Shipping Group and Sinotrans Group are small, most of them are only single-ship companies. Shipping is a big risk industry, if a shipping company's scale is too small; it lacks the ability to endure fluctuations on market conditions and strenuous competition, especially against well organized foreign shipping companies.

A major trend in the recent shipping market is that the competition becomes fairly intensified between state owned enterprises and foreign shipping lines though the demand keeps expanding. The main reason is that now more and more shipping companies are intending to increase their market share, and a set of customer-oriented philosophy has been introduced. The two large state owned enterprises China Ocean Shipping Company (COSCO) and China Shipping Company, dominate almost the entire shipping industry in China. These two giant operators still largely enjoy the market share in inland market due to their nation-wide service network. So the major competition faced by these two large Chinese shipping companies are the foreign shipping lines such as Maersk, American President Line, P&O Nedlloyd, M.O.S.K, Evergreen, etc.

Followed by Chinese entry to the WTO, in the shipping sector,

China is required to strictly abide by rules on multilateral principles such as Most Favored Nations treatment, transparency of trade and so on. Foreign investors will get permission to establish companies for the purpose of operating a fleet under the national flag of China. Foreign Service suppliers are being permitted to establish joint venture shipping companies though the share of foreign investment will not be allowed to exceed 49% of the total registered capital of the joint venture if for any reason they try to operate a vessel under the flag of China.

Chinese international shipping industry does not want to miss the boat when turning itself into a first-class player in the global arena. No significant rivalry exists among the domestic ocean shipping companies and the indigenous firms are relatively weak to compete in international market. As a result, the monopoly and superficial competition among the state-owned ocean shipping companies leads to its slow development in ocean transport.

2.6.5 Related and Supporting Industries

Shipbuilding industry

The main related industry for international shipping industry is the shipbuilding industry. According to the rapid growth in the world's shipping industry, the demand for the ship has increased greatly. Among this expanding international market, China has an increasing share with its export earnings increasing year by year. Chinese

shipbuilding industry includes the relatively developed sectors of design, ship-frame building, general assembly, necessary accessories and repair. Its techniques have reached a high level of sophistication. Its enterprises perform ship design and key equipment manufacturing. A variety of ships have been developed -- from the bulk carrier, oil tanker and dry cargo ship to the internationally advanced processed-oil tanker, chemical carrier, roll-on-roll-off ship, large air-cooling container ship, liquefied-petroleum-gas ship and high speed hydrofoil.

The main shipbuilding industry in China locates in several large cities such as Shanghai, Dalian, etc. These shipbuilding companies have a solid foundation for development. Their business methods, market operation, production techniques and production management are in keeping with international market practices. The products are not only facing the domestic market, but for large amount of export. There are also many ships imported to China every year, which jointly support the Chinese shipping industry.

In conclusion, Chinese shipping industry has stepped into a new period filling with opportunities and challenges. To face the ongoing fierce competition, the domestic firms should rapidly change their strategies to market-oriented, and keep on searching for a better new solution for survival.

Logistics industry

As supporting industries of international shipping industry, logistics service has become one of the most important industries and a new growth factor for Chinese national economy in the 21st century. In China, distribution and trading businesses are tightly knit. With the global reach of trade, extensive and high quality logistics services networks are critically essential. Chinese logistics service as a newly emerging economic sector is now on a basis of rapid progress, and the Chinese government is eager to promote the growth of the industry and foreign participation is encouraged.

Chinese large transportation and freight forwarding companies are turning themselves into major players in logistics services, such as Sinotrans, COSCO and China Post. For example, COSCO International Freight, China Ocean Shipping Agency, Sinotrans Road Transport, Sinotrans International Multimodal Transportation and Chinese Goods and Materials Storage Corporation have already taken the lead in developing logistics services. COSCO now provides logistics services, including importation of raw materials, storage, circulation, processing, packing and export of finished products for industrial trade.

Domestic companies in China are more familiar with the local market and able to provide low-cost operations in China, but they are not able to cope properly with strategic alliances in the supply chain, such as global multi-modal networks, high tech warehousing, services

for process integration (such as JIT and processing trade), sophisticated information and communication technology, or logistics consulting.

For example, in Shanghai, although the number of distribution centers is mushrooming, only five are able to distribute more than 1,000 tones of goods a month. Amid the expectation of fierce market competition driven by the WTO entry and globalization, there is growing demand from local companies for strategic partnerships offering supply chain management, technology transfer, logistics management training and warehouse automation.²⁰⁾

2.6.6 Government and Chances

Recent times have seen much new legislation related to the opening of domestic markets to foreign investment and joint ventures.

Since China initiated its Open Door Policy, the old vertical command system of management has been abolished. Prior to this, the Ministry of Communications not only controlled Chinese key ports, it also had direct control over the country's shipping companies. Thus provincial, regional and local government administered all planning, personnel, accounting and operations. Now Chinese stated policy is that of continued devaluation of power to the local level in order to establish a more effective management structure in shipping industry.

20) Hongkong Trade Development Trade Council 2002

Furthermore, the 5 largest state-owned transport companies are no longer directly administered by the Ministry of Communications. These companies are China Ocean Shipping Group (COSCO), China Shipping Group, China Yangtze River Shipping Group, China Road and Bridge group, China Gang Wan Group. For these companies, the State Council is now in charge of personnel, the Ministry of Finance is in charge of finance and the State Economic and Trade Commission is now responsible for their overall coordination.

Nearly all the large companies in the shipping industry are state-owned, and many important managerial positions are occupied by the officers from the government and members from the party. Most of them are politicians who are not the right person to understand the real economy. Therefore, a lot of projects were simply performed for the political objectives not for the economical development. Some critical and valuable resource was wasted.

As to chance for the Shipping industry, the continuous increase in foreign trade shows the most valuable chance. Entering the WTO brings the opportunities and challenges at the same time.

Chapter 3

International Comparison of Shipping Policies

3.1 An Introduction to Shipping Policy

3.1.1 Background of Shipping Policy

General characteristics of the shipping industry, to mention a few, that it is an international business and open to global competition, the ephemerality of shipping services if not used immediately and wild fluctuations in freight rates. The industry is capital intensive and has a cost structure of heavy fixed cost. When price competition or rate war breaks out, it often leads to cut-throat competition. This is the reason why most governments still allow shipping firms to form shipping conferences and strategic alliances in international liner shipping. However, anti-trust immunity has become a hot issue in maritime transport reform.

There is no consensus about shipping policies and global maritime order between major maritime nations and among global economic organizations such as the World Trade Organisation (WTO), UNCTAD and OECD. In Geneva, the WTO negotiation group of maritime transport sector (NGMTS) wants to build a general policy

framework for transparency and the progressive liberalisation of the shipping market.

With globalisation accompanied by deregulation and liberalisation leading to open markets, the shipping business is changing rapidly, transforming it and other economic sectors as well. Rapid developments in information and communications technologies have brought a knowledge-based global economy, seriously affecting shipping business.

Thanks to the extensive global logistics networks of global carriers, all economies, developed and developing, have become more inter-dependent and complementary to each other. Now the world economy is working as a single market.

3.1.2 Definitions of Shipping Policy

Shipping policy constitutes a part of a country's transport policy which itself is an element of an overall economic policy. It is more or less developed in particular countries and consists of various elements depending on the size and the economic importance of the merchant fleets of these countries.

Shipping policy may be defined as a totality of economic, legal and administrative measures by means of which the State influences the position of its national fleet in the national economy and in the

international freight market²¹).

Shipping policy has two different aspects: domestic, which is the attitude of the State towards its own merchant marine, and foreign which is its attitude towards the fleets of other countries.

3.2 OECD Shipping Policy

3.2.1 Introduction of OECD

Organization for Economic Co-operation and Development (OECD) is an international economic organisation for economic cooperation and development. Its membership (29 members, March 2003) consists of mostly industrial countries with the social-economic system based on democracy and free market capitalism. The OECD member countries have pioneered the free enterprise system all over the world. OECD shipping policy represents the basic spirit of OECD, that is, free and fair competition, equal access to the market in a deregulated environment.

In a word, OECD supports shipping liberalism. It is based on the principle of free and fair competition in maritime transport, irrespective of the vessel flag. Under shipping liberalism, shipping firms may have free and competitive access to shipping markets,

21) I. Chrzanowski, *An Introduction to Shipping Economics*, 1985, pp112.

while shippers have the right of free choice of carrier, be it a national flag or foreign one.

The very essence of shipping liberalism is that the merchant marines operate in the freight market without any intervention of the governments or their agencies. Any form of shipping protectionism is contrary to this principle. The free market principles rule the shipping market.

This liberal principle was laid by the Dutch lawyer, historian and humanist, Hugo Grotius in the 17th century. It was conceived as a means to enable a free expansion of the Dutch fleet in the increasing protectionism of the other maritime powers, especially the British. This liberal position gained its ground when the British government suspended the Navigation Acts in the first half of the 19th century. Since then, Great Britain has been the leading champion of shipping liberalism.

Shipping liberalism has been represented by the OECD Maritime Transport Committee. At present, the Committee is a sole inter-governmental body that meets regularly to discuss economic and political aspects of international shipping. Its members continue to give special consideration to the problems created by flag discrimination by governments, and also keep a close watch on the developments resulting from the policy of creating or developing national merchant marines without economic justification. It has been

performing an essential task to discourage state interventions and to prevent the further spread of discriminatory practices.

3.2.2. OECD Common Shipping Principles

While there was some liberalisation between the 1960s and the early 1980s, the reverse was the case in shipping, notably in non-OECD countries. Realizing this, and reorganizing that certain member countries maintained barriers for transportation of certain cargoes, and that no individual member country could fight protectionism and malpractice alone, the OECD's work over a number of years focused on a number of issues aimed at harmonizing the shipping policies of individual member countries. The work in 1987 resulted in a Council Resolution Concerning Common Principles of Shipping Policy for Member Countries.

By adopting the Recommendation (formally updated in September 2000), member countries agreed to complement their previous commitments by pursuing a common approach to international shipping policies and practices based on the following elements:

- The maintenance of open trades and free competitive access to International shipping operations, maritime auxiliary services and multimodal transport involving a maritime leg;
- Co-ordinated response to external pressure, based on full consultation between member countries;

- The role and recognition of governmental involvement by member countries to preserve free competitive access and provision of choice to the shippers;
- A common approach to the application of competition policy to the liner shipping sector;
- Measures relating to safety, the environment and substandard shipping.

These principles cover the non-discriminatory treatment as regards the provision, access and use of maritime auxiliary services and multimodal transport services involving a maritime leg, as well as measures relating to the promotion of safety, the protection of the marine environment and the prevention of substandard shipping.

One of the roles of the OECD Shipping Policy Principles was to provide a clear and firm foundation to underpin the shipping policies of member countries. In this respect, the Principles appear to be helpful and a number of member countries have used them to review and rewrite their own shipping policies. New candidate countries seeking OECD membership are required, as part of obligations assumed on becoming members, to adhere to these Principles.

The principles have acted as a powerful common reference point to determine good practices in international shipping. A clear and concise enunciation of policy principles by member countries plays a valuable role in guiding their own policy making and interactions

with non-OECD economies. With the globalisation of the world economy, shipping liberalism has gained momentum.

3.3 WTO Shipping Policy

3.3.1 Introduction of WTO

The World Trade Organization(WTO) was created in January 1995 as a result of the final round of the General Agreement on Tariffs and Trade(GATT), has 148 membership countries until 13th October 2004 accounting for 90% of world trade²²).

The General Agreement on Trade in Services (GATS) was the first ever set of multilateral legally enforceable rules covering international trade in services. It was negotiated in the Uruguay Round and formed part of the covered agreement of WTO.

The GATS establishes a set of rules and disciplines governing WTO Member countries' use of trade measures in services. Such measures consist of laws, regulations, administrative actions and decisions affecting the purchase, payment, or use of a service or the presence of Foreign service suppliers. The GATS disciplines extend across all government levels, including non-governmental bodies in the exercise of delegated powers. (Page 25, Manual of Statistic in International Trade in Service, edited by

22) ww.wto.org

UN Statistics Division, final draft 6 September 2002.²³⁾

1) Purpose of GATS

GATS creates a credible and reliable system of international trade rules; ensures a fair and equitable treatment of all participants (principle of non-discrimination); stimulates economic activity through guaranteed policy binding; and promotes trade and development through progressive liberalization.

2) Progressive Liberalization

GATS promotes the liberalization of international trade in service. The Uruguay Round was only the beginning. On-going negotiations on commitments have taken place since the Uruguay Round. The goal is to take the liberalization process further by increasing the level of commitments in schedules.

3) Members' Commitments on Market-opening: Schedule of Commitments

Each WTO Members is required to have a Schedule of Specific Commitments ("National Schedule") which identifies the services for which the Member Guarantees market access and national treatment and limitations that may be attached.

The degree of opening up market for a given sector or mode of services varies from country to country. Some members offer full competition in the

23) Manual of Statistic in International Trade in Service, *UN Statistics Division*, 6th September 2002. pp 25-27.

market while others may deny any form of establishment or in capital participation, setting ceiling for the number of services suppliers and their employees, limiting geographical presence of establishments.

While GATS requires all Members countries to submit schedule, it dose not obligate them to assume commitments in any sector. Members are free, subject to the results of their negotiations with other participants, to identify which sectors, sub-sectors or activities they will list in their schedules, and it is only to these that the commitments apply.

The GATS requires WTO Members to ensure that the relevant standards, requirements, and procedures do not constitute unnecessary barriers to trade and, in particular, that they are not more burdensome than is necessary to ensure the quality of service.

3.3.2 General Obligations under GATS

Most-Favored-Nation Treatment(MFN)

Most Favoured Nation treatment(MFN)²⁴:Favor one, Favor all. MFN means one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunity in that sector should be given to service providers from all other WTO members. MFN applies to all services, but some special temporary exemptions have been allowed.

24) <http://www.wto.org/wto/about/fact2/htm>

MFN Exemptions

A number of countries are given the right to continue giving more favorable treatment to countries in particular service by listing " MFN Exemptions" alongside their first sets of commitment.²⁵⁾ However, these exemptions could only be made once and temporary in principle not more than ten years and are subject to review after not more than five.

National Treatment

In services trade, it means that once a foreign country has been allowed to supply a service in one's country there should be no discrimination between the foreign and local companies. Under GATS, a country only has to apply this principle when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment sectors where it has made no commitment.

Other Obligations under GATS

1. Transparency -- GATS Members are required, *inter alia*:

- ① To publish promptly all measures of general application that significantly affect trade in services covered by specific commitments; or to make such information publicly available and notify no Council

25) List of Article Exemption.

- of Trade in Services of WTO promptly all introductions or changes in laws, regulations or administrative guidance;²⁶⁾and
- ② To establish national enquiry points mandated to respond to other Member's information requests.²⁷⁾

2. Impartial Service Regulations vs National Policy Objective

The GATS expressly recognize the right of Members to regulate to supply of services in pursuit of their own policy objectives and does not seek to influence these objectives. GATS establishes a framework of rules to ensure that services regulations are administered in a reasonable, objective and impartial manner and do not constitute unnecessary barriers to trade.²⁸⁾

In sectors where members have committed, each members must ensure that all measures of applications affecting trade in services are administered in a reasonable, objective and impartial manner. Judicial arbitral or administrative tribunals or procedures must exist that allow Foreign Service suppliers to obtain an impartial review.

3.4 EU Shipping Policy

3.4.1. Brussels Package

26) Article III 1, 2, 3, of the GATS.

27) Ibid, Article III 4.

28) Ibid, Article IV.

After the UN Liner Code was accepted in April 1974 by a majority in the UN, some of European maritime nations which broke away from Group B(developed nations) at the last moment and voted for the Code, started to find ways to gain advantage by adoption of cargo reservation on trade routes between themselves and the developing countries. In 1975, Germany, France and Belgium announced that they had started procedures at the national level to ratify the Code. Because of these independent initiatives, the European Commission argued that the Community as a whole had to decide jointly on the basis by which it could accede to the Code, because the Commission itself was concerned about the protectionist nature of the cargo sharing principle in the Code.

In March 1975, the Commission approved, in principle, the adoption of the Liner Code, subject to substantive reservations.

The common approach concerning international shipping was a first occasion for the Commission. All EU nations agreed to negotiate a joint formula and finally produced the so called Brussels Package in 1979(EEC Regulation 954 of 1979(May 15, 1979), the Council Regulation governing sea transport in liner shipping for the member states. This common shipping policy is based on the principle that closed conferences should operate in open trades and conferences should be subject to competition from non-conference lines.

The Brussels Package was a compromise formula which allowed

accession with reservations. The Regulation encouraged the member states of the EU to ratify or accede to the Liner Code, without the EU itself becoming a contracting party to the Liner Code. It merely recommended the member states to do so and the final decision is up to the states. The basic idea of the Package is that in applying the cargo sharing principle of the Liner Code, the member states may apply it to the other end of the trades with the developing countries on the one hand, but they do not apply it, on the other, to the EU end of such trades and to intra-trades between themselves or on a reciprocal basis between member states and other OECD countries who are parties to the Liner Code.

The purpose of the Package is to contain the worst case of the cargo sharing rule practiced by the developing countries, while maintaining the freedom of the industry to self-regulate trade between them including other OECD countries on a reciprocal basis.

The distribution of the 60 per cent pool of the trade for EU members will be decided unanimously so that all the lines carry a fair share (Article 2(1) of the Regulation). Here the fair share shall be determined by the application of commercial principles.

In this context, the Regulation provides that a number of factors shall be taken into account. They are, firstly, volume of cargo carried by the conference and generated by the member states; secondly, past performance of shipping lines in the trade covered by the pool; third,

volume of cargo carried by the conference and shipped through the ports of member states; and finally, the needs of shippers whose cargoes are carried by the conference. This rule of cargo sharing confirmed in the Package reflects the self regulation of the industry for their part and denies a universal acceptability of the Liner Code, while giving the developing countries the full benefit of the Liner Code.

The British government enacted the Merchant Shipping Act, 1982 to protect its international trading and shipping interests by acceding to the Liner Code. The main purpose of the Act was to forestall more drastic measures being taken by UNCTAD or developing countries and to avail itself of the Brussels Package.

3.4.2. Maritime Package

Together with the Brussels Package, the Maritime Package agreed in 1986 by the EU Ministers forms the basis of the EU common policy on shipping. These two measures are the outcome of a consensus among the EU member countries in a way to pursue a free market oriented approach in liner shipping. In the meantime, a memorandum "Progress towards a common transport policy - Maritime Transport", Bulletin of the European Communities, Supplement 5/85 was adopted to create the basis of a coherent framework for EU shipping policy in 1984. After two years of discussion of proposals, the Council adopted the maritime package.

This Package includes four regulations:²⁹⁾

1) No. 4055/86. Freedom to provide service

This regulation introduces the principle of freedom to provide services to intra-community trade and prevents any member state from discrimination in favor of its own national shipping companies to the disadvantage of shipping firms of other member states. In the bilateral agreement, cargo sharing agreements are permitted as an exception only when EU liner firms have no other effective means of access to trade with third countries.

2) No. 4056/86. Competition Rules

This is directly related to the liner shipping industry. This regulation applies to all international liner shipping services serving the Community ports. It exempts shipping conferences en bloc from the Treaty's provisions on restrictive practices on rates, conditions and quality of services and other matters concerning the commercial practices of conferences. The obligations imposed on conferences by the regulation are designed to help the shipper. Even though the regulation prescribes the conduct of conferences such as the observance of agreed freight rates, it is primarily regarded as matters of contract to be settled by usual commercial means and not by Governmental intervention. This regulation intends to provide a

29) Smith, Brian "EUROS: The European Community ship register" *Shipping Policy in the European Community*, Avebury.

balance between the interest of conferences and that of shippers.

The regulation does not allow any discrimination against a shipper or commodity on rates and conditions of carriage unless justified on an economic ground. The conferences are not required to file their tariffs with the EU Commission, as rates are basically a matter of contract between carrier and shipper. No prior notification is necessary for independent action. And the conferences must have consultations with shippers or shippers' councils for the purpose of solutions on general issues of principle between shippers and conferences concerning the rates, conditions and quality of services.

3) No. 4057/86 Unfair Pricing Rules

This applies to liner trades and empowers the Community to impose a compensatory duty on non-EU shipowner if unfair practices are found to be present. The unfair practices are unfair pricing practices, injury and threatening the interests of the Community. However, the definition of unfair pricing practices as undercutting the Community shipping services where this is made possible by non-commercial advantages such as subsidies and preferential treatment is not at all clear. Economic and political structures of nations of the world are not unitary and the ensuing pricing practices are different. To regulate liner firms from non-EU countries according to this criterion may cause unnecessarily harmful effects to the shipping community including the users of the services.

4) No. 4058/86 Coordinated Action

An important deficiency in the package concerns the new form of co-operative arrangements, namely, consortia. They have been devised as a means of competition based on organizational efficiency in liner trades in order to cut costs to meet competition from operators from lower-cost countries. The competition regulation did not, however, explicitly exempt them from the operation of the competition rules as it did conferences. Until consortia were legitimized by a subsequent block exemption, they were in an uncertain position.

3.4.3. Consortia Block Exemption

The legal status of consortia, a different type of organization of liner firms from the traditional liner conferences was not clear following the passage of the Maritime Package. After six years of consideration, the EU Council approved a regulation relating to consortia on February 25, 1992. As seen above, the conferences are exempted from the competition rules (Regulation No. 4056/86), but consortia were in a sense at risk because they were different from conferences. The 1992 regulation gives to consortia in the European liner trades a group exemption from EU competition laws also.

The main objectives of this regulation are to help the industry to attain the necessary economies of scale in order to compete successfully in the world liner shipping market, and to make it easier for consortia to cooperate in a way which is economically desirable

and without adverse effect from the point of competition on the one hand, and to "ensure in particular that a fair share of the benefits resulting from the improvements in productivity and service would be passed on to shippers" on the other³⁰⁾

It provides for group exemption of consortia, whether they operate in a conference or not, subject to certain conditions. The compliance conditions for consortia are, among others, as follows.

First, if the consortia operate in a conference, there must be effective competition on price or service between conference lines.

Second, consortium lines are subject to effective competition, actual or potential, from non-parties to the consortia agreement.

Third, consortia must allow the member lines to offer their own individualized service arrangements to shippers.

Finally, they must preserve the freedom of action of members on such matters as leaving consortia or common marketing structure.

The European Commission's legislation is specific in dealing with individual problems instead of an overall arrangement, reflecting the

30) Commission of the European Communities, Communication by the Commission, Report on the possibility of a group exemption for consortia agreements in liner shipping, Brussels, 1990, pp.30-31.

actual changing conditions of the industry's organization. Consortia are a different type of the industry organization from conferences and this regulation clarifies the position of consortia in liner shipping. This new regime has some practical merits compared with the US system. For example, potential consortia members need not wait for 45 days and have no filing obligations, explicitly reflecting the frequent alteration of consortia agreements according to the market conditions. This EU approach is fundamentally different from the US Shipping Act of 1984, which grants anti-trust immunity to all kinds of agreements within the single law. However, Raymond Simonnet, deputy director general of the EU Competition Directorate, expressed his opinion that the EU regulations are compatible with the US regime and notes the flexible implementation of the regulation, adding that consortia shipowner will see regulatory changes introduced by the Commission if technical or economic facts warrant them.

3.5 US Shipping Policy

United States of America is the largest market place in the world. The carriage of its foreign trade is open to commercial competition from both national and foreign shipping companies. United States of America advocates principle of free and fair competition in international shipping and is opposed to cargo sharing agreements. The open nature of its shipping markets goes a long way in establishing "the free market" as an important principle in international shipping policy. In practice, however, there are areas

where shipping policies and strategies of USA do not appear to match the ideology and principle of the free market³¹⁾.

The basic principles of USA shipping policy are to achieve the following objectives:

- Increase the competitiveness of shipping serving its international trade.
- Enhance the competitiveness of its national fleet to serve the interests of consumers by providing low cost and efficient shipping services.
- Maintenance of a national merchant fleet able to meet national security needs.

3.5.1. The Ocean Shipping Reform Act (OSRA) of 1998³²⁾

The Shipping Act of 1984 was a profound change from the established regime on the conference system. This Shipping Act worked well for the liner shipping industry, balancing interests between the participants in the market. However the shippers, that is, the National Industrial Transportation League (NITL) wanted to introduce more competition into the market.

31) UN, *Framework for the Development of National Shipping Policies* New York, 1999, pp30.

32) www.fmc.gov

Over more than three years of debate, both houses of Congress of the United States approved identical versions of a bill that revised the 1984 Shipping Act. Forwarders and non-vessel-operating common carriers hoped to amend the bill to their liking but it became law since May 1999.

The legislation was backed by a diverse coalition of shippers, carriers, unions and ports. The Act promises fundamental changes in the shipper-carrier relationship. The bill's most prominent provision is to allow key terms of shipper-carrier service contracts confidential. Shippers no longer are able to demand service contract terms identical to those that carriers grant to similarly situated shippers. Because contract terms such as rates and service commitments would be kept confidential, shippers would not know what terms a competitor has. In the long term nothing remains confidential. According to the market conditions, carriers and shippers may change the terms of contract.

The reform bill produces an environment in which most cargoes move under negotiated contracts, and tariffs become less important. The bill ended requirements that carriers should file tariffs with the Federal Maritime Commission. Instead, tariffs have to be available through private tariff services in an FMC-approved format. Carriers usually use automated filing of tariffs with FMC. Regarding this matter, the National Industrial Transportation League (NITL) agrees that tariff information should be accurate and accessible, but expresses

its opinion that carriers should be creative and innovative in deciding how to list their tariffs.

The NIT League wanted to eliminate anti-trust immunity in the reform bill, but finally and reluctantly agreed to drop their effort and compromised this point with major carriers like Sea-Land (present Maersk-Sealand) and other carriers.

3.5.2. Major Provisions of Ocean Shipping Reform Act 1998

- 1) Service contracts will be filed with Federal Maritime Commission, but several key provisions - rates, service commitments, inter-modal origin and destination points, and damages for non-performance - can be kept confidential. Commodity, volume, origin and destination port ranges, and contract duration must be made public.
- 2) Tariffs will no longer be filed with FMC, but will be publicly available through private tariff services or carriers' internet sites in FMC-approved format.
- 3) FMC will continue to regulate ocean liner shipping and enforce carriers' tariffs. FMC will have access to carriers' tariffs.
- 4) Shippers no longer will demand that carriers match service-contract terms given similarly situated shippers. Individual carriers have

more freedom than conferences in refusing granting service contracts.

- 5) Required notice period for independent action (under which carriers deviate from conference tariffs or service contracts) is reduced from 10 business days to five days.
- 6) Conferences will not be allowed to interfere with members' negotiation of service contracts, although carrier agreements will be able to issue voluntary guidelines. Conferences won't be able to require disclosure confidential service contract terms, including rates.
- 7) Group of ocean carriers will be able to jointly negotiate with inland carriers for rates and services, subject to anti-trust laws.
- 8) Ocean carriers will be able to negotiate service contracts individually, as a conference or alliance. (the 1984 Shipping Act did not cover alliances).
- 9) Shippers will be able to sign service contracts individually as shippers' association, or as a group (subject to anti-trust laws).
- 10) Non-vessel-operating common carriers will continue to be allowed to sign service contracts with carriers, but not with shippers.

- 11) Ocean freight forwarders and non-vessel-operating common carriers will remain separate definitions, but both will be known as ocean carrier intermediaries. For the first time NVOs must be licensed by FMC. Forwarders will continue to be licensed. Bonding requirements for forwarders and NVOs are unchanged, as is equipment that carriers pay forwarder compensation.

Chapter 4

Chinese Shipping Policy Before Joining the WTO

4.1. Chinese Shipping Policy (1949 - 1978)

Until 1978, the Chinese shipping industry was run along similar lines to the former USSR and other traditional socialist countries, as a state controlled collectivist, centrally planned system. As the Chinese government and state enterprises were both the subject and the object of government policies during this period, the Chinese shipping policy was designed to protect and fully subsidize ocean transport. From a development perspective, the shipping industry can be divided into two parts: Firstly, the establishment of the shipping industry through international cooperation and the leasing of foreign vessels; secondly, the period of the establishment of the Chinese own national ocean shipping fleet.

4.1.1 Policies to Establish an International Shipping Business

At the beginning of the 1950s, the newly established China had no ability to organize its own ocean fleet, as there were numerous tasks that needed to be undertaken before a fleet could be built. To revive

the beleaguered national economy as soon as possible, the Chinese government took the following measures to develop foreign trade transport, and to establish an international shipping business.

1) International Cooperation in Shipping.

Due to a boycott by the major western powers in the early 1950s, the international shipping partners of the Chinese government were almost exclusively other socialist countries, in particular Poland which was relatively strong in shipping. On 15 June 1951, China and Poland set up the Chinese-Polish Joint Stock Shipping Co, in Tianjin with the Chinese government as the representative share holder as proposed by Poland. The vessels flew the Polish flag. In July 1951, the Chinese government signed an agreement with Czechoslovakia to operate two ocean-going vessels on behalf of the Chinese people. The so called "entrustment of operation" meant that the chinese vessels were operated by Czechoslovakia with full power, China only providing a certain number of sailors. Czechoslovakia settled its financial accounts annually, and took 3% of the total revenue in return for administering the vessels.

2) Leasing Vessels.

In September 1950, the Chinese government established an

international shipping company in Tianjin. The company was moved to Beijing in August 1952. The main task of the company was to develop foreign trade transport with vessels leased from overseas China, and certain foreign individuals and companies. In order to encourage the enthusiasm of the overseas and merchants to participate in foreign trade transport, the Ministry of Communications of the People's Republic of China created special policies for the overseas China, who had vessels, to become private seagoing vessel agents. The policy stated that any property rights defined to overseas Chinese, or all the vessels of the Chinese merchants which flew foreign flags, or holding the approval issued by the governmental overseas affairs commission, could enjoy preferential treatment.

4.1.2. Policy Measures for Developing the Shipping Industry

By the end of the 1950s, the international situation was slowly improving day by day. With the cancellation of the embargo policy to China, the Chinese national economy developed rapidly, the international maritime policy of the Chinese government moved toward establishing a nationally owned ocean shipping fleet to speed up the development of Chinese shipping industry.

- 1) Setting up state-owned ocean going enterprises and ocean shipping fleet.***

In 1958, the total marine transport volume of foreign trade had reached 11.58 million tons, and it was five times as high as it was in 1952. Only 20% of the total volume of cargoes shipped by Chinese side, according to the foreign trade contracts, while among this part 60% was transported by the vessels hired from foreign countries. According to the statistics of 1958 and 1959, the annual leasing tonnage was over 1 million. This resulted in losing a large amount of foreign currency and also was controlled by others both politically and economically and it was difficult to protect its national benefit. At the same time, the Chinese shipbuilding industry had developed gradually and the cargo ships built by Chinese shipyards were ready to be used. If there was not of the national ocean shipping fleet, the ships built could not sail in the international waters, flying the Chinese national flag. Therefore, on the base of the Ocean Transport Bureau of the Ministry of Communications, which was established in 1958, the Chinese government decided to accelerate the work of setting up its own shipping enterprise and ocean shipping fleet. On 27 April 1961, the China Ocean Shipping Company (COSCO), as well as COSCO Guangzhou Branch formally were established. This opened a new chapter in the history of Chinese shipping industry.

2) Granting Loans for Purchasing Vessels and Establishing State-operated Shipping Fleet.

The development of an established ocean fleet with the leased vessels at the beginning was relatively slow. Until 1962, the transport capacity was only 140,000 gt which was about 1% of the total foreign trade volume. Therefore, the transport of foreign trade was undertaken by the leased vessels mainly at that time. Leasing foreign vessels used a large amount of foreign currency. According to the statistics, the costs of chartering vessels was as much as 383million US\$ from 1958 to 1962. This amount of money, with its value in the year 1962, could purchase about 40 new vessels of 10,000 gt, or more than 1 million gross tonnage. At that time, the international shipping market was in recession, the price of second-hand vessels was continuously decreased. In the meantime, the surplus of international shipbuilding capacity was about 30-40%, shipyards provided loan forms to accept orders: prepaid 10-30% of the price of the vessel, and the rest repaid within 7-10 years plus 5-6% interest. Seeing that the Chinese government judged the hour and sized up the situation, and adopted the important strategic decision of developing shipping industry. In November 1963, the Chinese government decided to purchase second-hand vessels with the abroad floating capital of the Bank of China to develop an ocean shipping fleet. From then on, the development of Chinese ocean shipping fleet entered into a new period of development with loans to purchase vessels. Therefore, Chinese shipping industry was growing strong

rapidly. In 1975, the total tonnage of the ocean-going fleet was more than 5 million and in 1976 the total volume shipped by the Chinese fleet was about 70% of the total foreign trade volume. This not only ended the history of relying on leasing foreign vessels for ocean transport, but also laid the solid foundation for the latter opening and reform period to promote Chinese shipping industry.³³⁾

4.2 Chinese Shipping Policy (1978-2001)

Following the implementation of the reform and open market policies from 1978, and other developments, particularly in the transition from a planned economy to a market economy, China began the reform of the state-owned shipping enterprises undertaking international maritime transport. The reform process can be divided into five steps: delegating power and making the enterprises more profit oriented (1978 - 1984), reforming taxation and protection (1984 - 1986), changing the system of job responsibility through operations by contract (1987 - 1991), transforming the operational system (1991 - 1995) and experimenting on establishing a modern enterprise system (from 1995 to now and in a continuous reform process). Reform in Chinese shipping policy, therefore, formed a policy system with a certain historical connection to the planned economy and obvious contemporary differences. The adjustments and developments of maritime policy are as follows:

33) Guangxi Sun and Shiping Zhang, "General Review of the Chinese shipping Policy for the contemporary era" *Maritime Policy & Management*. Vol.26, No. 1, 1999, pp93-99.

4.2.1 The Policy for Shipbuilding and Purchasing

Since 1978, particularly since the transition from the national planned economic system towards a market economy, national policy regarding state shipbuilding and purchasing vessels has made significant changes. In 1981, the Chinese government decided that any shipping enterprises which implemented an independent accounting unit, and had the ability to repay loans, including the basic investment of building and purchasing vessels, would be given access to enterprise loans rather than the traditional form of planned financial allocations. As shipping enterprises were considered as marginally profitable businesses, and as it was difficult to repay loans on time, the government decided in 1984 that banks would provide low interest loans for building vessels and purchasing vessels, to extend the time limits for repaying loans and to provide tax incentives for shipping enterprises.

4.2.2 The Policy to Connect Transport Services.

In April 1985, the Chinese government adopted regulations that allowed foreign capital shipping enterprises to access the Chinese market in international transport in the form of joint ventures, with approval in the form of short-term administrative measures for shipping companies engaged in international marine transport.

In June 1990, the Ministry of Communications declared the regulations for international liner transport, and since 1 July 1990, foreign international shipping companies have been allowed to be engaged in the operation of international liner

transport in Chinese ports with government approval. With respect to national treatment, there would be no discrimination.

The Ministry of Communications further regulated in March 1992, under the principle of equality, foreign shipping companies were allowed to establish subsidiaries through bilateral agreements, with respect to national treatment, only for its own companies and activities related to the shipping business. In July of the same year, foreign shipping companies were allowed to set up their own company or joint shipping enterprises under the principle of equality and government approval. With respect to national treatment, they could engage in canvassing for cargoes, issuing bills of lading, settling accounts and signing contracts for shipping business for their own vessels.

In November 1992, the Chinese government reaffirmed that foreign shipping companies would be allowed to establish independent companies and joint ventures in China, and could canvass for cargoes, sign bills of lading, settle accounts and sign contracts for their own vessels.

In September 1993, the Chinese government submitted the revised quotations and the list of remitted most privileged treatment: according to the principle of properly opening Chinese shipping market, the relevant foreign shipping companies could establish independent enterprises or subsidiaries in China, to engage in normal business activities for their own or other operated vessels and the relevant Chinese laws for joint ventures and independent enterprises through bilateral agreements, but foreign investors may not hold more than 49% of the resultant shares. Also foreign shipping companies should have the following

qualifications for establishing independent shipping companies in China: (1) have more than 15 years experience in shipping and have a shipping office for more than 3 years in the city intended to set up a company; (2) the liner vessels should call at the port where the companies are intended to be set up every month; and (3) the register capital of the foreign companies should not be less than US \$1 million. The scope of operations: canvassing cargoes, signing bills of lading, settling tariffs, signing contracts for their companies and its operated vessels.

4.2.3 Auxiliary Services to the Container Shipping Industry.

In December 1990, the Chinese Government restated in "The Chinese Container Administration of International Marine Transport" to indicate the process of approval of establishing international container transport enterprises, and also promulgated that with approval, the foreign merchants were allowed to establish international container handling enterprises in the Chinese ports in the form of cooperation; foreign merchants were also allowed to set up inland container freight terminals. For the national treatment, there would be neither discrimination nor privileges. In July 1992, the Chinese government regulated foreign merchants were allowed to operate loading and discharging logistics in the form of cooperation with approval.

At this time, the Chinese government clearly declared that foreign enterprises were not allowed to operate a shipping agent business independently, but allowed foreign merchants to engage in freight forwarding. On 22 February 1995, the Ministry of Foreign Economy and Trade promulgated the "Foreign Merchant

Investment in International Freight Forwarding" regulation, which specified the process of approval and specific details for foreign merchants investing in the freight forwarding business: the investors should be enterprises related to international freight forwarding and with a history of international freight forwarding of at least 3 years, and have related managerial and specialized personnel, have steady cargo resources, and possessing minimum number of freight forwarding networks, the minimum registered capital was not less than US \$1 million; with approval, they could canvass cargoes, book, charter, operate international multimodal transport, logistic, container packing and unpacking, issue bills of lading, customs declarations, inspection, insurance, settle accounts for freight in trade and act as an international freight forwarding agency for cargo import and export.

Besides the above mentioned three marine transport service trade aspects, China implements policies in coastal and inland waters' transport that most countries in the world implement, from the point of view of protecting their national interests. The Chinese government also allows foreign companies to develop water transport enterprises jointly with Chinese companies, being engaged in coastal and inland water transport.

According to statistics, until the end of 1996, with regard to the international shipping market access, the relevant Chinese government department approved and established 16 sub-independent companies in China, more than 350 various shipping representatives or offices, 61 enterprises of Chinese and foreign joint ventures for coastal and inland water transport, 64 companies of Chinese and foreign joint shipping ventures for the international marine transport, 123 ports

were opened and 81 were opened to foreign vessels, more than 110 shipping routes of international liner were approved, and marine transport agreements were signed with 46 countries, and friendly relationships were established with 40 ports. Thus, the Chinese shipping market has been basically opened up and Chinese shipping policy has connected with international shipping practice.

Chapter 5

Chinese Shipping Policy After Joining the WTO

5.1 Shipping Services

According to the Services Sectoral Classification List, maritime transport services include passenger transportation, freight transportation, and rental of vessels with crew, maintenance and repair of vessels.³⁴⁾ With respect to this service sector, WTO regulations mainly focus on access to maritime transportation, freight and passenger, commercial presence of maritime transport, national treatment for Foreign Service suppliers, etc. Important as this service sector is, China has made a substantial effort to again reform its legal system, promulgating several regulations and administrative rules that implement its new commitments to the WTO.

5.1.1 International Shipping Market Administration

The Regulation of the People's Republic of China on the International Maritime Transportation became effective on January 1, 2002 and the Implementing Rules, drafted on the basis of these Regulations, became effective on March 1, 2003. Together they detail the conditions, procedures, and qualifications for market

34) WTO Secretariat(1991), Services Sectoral Classification List, HTN. GNS/W120, item A, art. 11.

access to international maritime transportation. The Regulations of Maritime Transportation have adjusted and reformed the administrative pattern with respect to access the international shipping market; they have simplified the procedures and formalities; and they have enhanced supervision of the competitive conduct of shipping enterprises, thus firmly advancing the development and improvement of the international shipping market in China.

The competent authorities have, in accordance with the reform of the system of administrative approval advocated by the State Council, reviewed the relevant regulations governing approval of international shipping project, in order to make practical changes to the governmental function, reducing administrative approval for general economic project, and shifting to macro-administration and supervision over the market order. The core objective in the administration of international shipping in 2002 was to implement the new regulations. In order to help the relevant enterprises to become familiar with the requirements, spirit, and principle of the Regulations, the Ministry of Communications organized many meetings for publicizing and enforcing the Regulations, reached out to relevant departments, entities and enterprises, and rendered necessary consulting and interpretative services with satisfactory results. A year later, it was clear that Chinese shipping industry has basically completed the transfer from the traditional pattern to the new pattern.

According to the Regulations on International Maritime Transportation, Foreign service suppliers, may:

establish equity joint venture or contractual jointly venture to engage in

*international shipping services, international shipping agency, international ship management services, loading and unloading of international shipments, international maritime container freight station and container yard services, international maritime cargo warehousing services, and offer routine services for the vessels owned or operated by investor.*³⁵⁾

Jointly promulgated by Ministry of Communications and the Ministry of Commerce, the Provision on Administration of Foreign Investment in International Maritime Transportations³⁶⁾ further clarifies the services open to foreign suppliers and the commercial presence required for each service. With respect to international maritime cargo, foreign suppliers may establish wholly foreign-owned companies³⁷⁾ to canvass cargo, sign bills of lading, settle freights, warehouse, conclude services contracts, and engage in other ancillary services for vessels they own or operate.

According to another important rule, the Notice on Question Relating to the Establishment of a Wholly Foreign-Owned Shipping Company by Foreign Shipping Companies,³⁸⁾ approved by China of operations in China by wholly

35) Regulation of the People's Republic of China on International Maritime Transportation, promulgated by the Stated Council of PRC on December 5, 2001, signed by Prime Minister Zhu Rongji, published on December 21, 2001, and effective January 1, 2002; reproduced infra as Appendix A. See art. 32.

36) Promulgated by Decree No.1 of the Ministry of Communications and Ministry of Commerce on March 2, 2004, and effective as of June 1st, 2004.

37) Ibid. art. 4

38) Jointly promulgated by MOFTEC and MOC in 1995.

foreign-owned shipping companies must be in accordance with reciprocal commitments in the bilateral maritime agreement or memorandum between China and the mother land country of the foreign shipping company. In January of 2001, this notice was replaced by the Interim Provisional Regulations on the Examination and Approval of Wholly Foreign-Owned Shipping Companies, which reaffirmed the reciprocity requirement in the old notice.³⁹⁾ As a regulation it not only confirmed the contents of the Notice, but added to their gravity, as according to the legislation law of China, a regulation is a higher form of law than a notice or circular. This regulation also specified some elementary requirement for the application to establish in China a wholly foreign-owned shipping company, viz. qualifications of applicant, requisite documentation and procedure, and requirements for the establishment of an affiliate. Some application requirements were dispensed with in the regulation; for example, submission by foreign investor of balance sheets for the preceding three years, thus, lowering the threshold for such establishment. As the same time, however, the regulation introduced some requirement making establishment of such companies more difficult in China, and retained other from the preceding notice. For example, an applicant enterprise must have been engage in shipping services for at least fifteen years before applying and, if it plans to establish a wholly foreign-owned shipping company in China, it must have established a representative office in the planned port threes years in advance and its liner must anchor at this port at least once a month.⁴⁰⁾ Chinese employees must account for at least 85% of the staff of the wholly foreign-owned company.⁴¹⁾ Through these regulations and

39) Interim Regulation on the Examination and Approval of Wholly-Foreign-owned Shipping Companies art. 4.

40) Ibid. art. 5.

administrative rules. China has undertaken to meet all of its commitments in the maritime service sector.⁴²⁾

5.1.2 Systematic Change in Domestic Shipping Administration

A major step in reform of the administrative system for Chinese domestic shipping occurred in 2002, when the Ministry of Communications issued its Circular on Adjustment in Reform of Administrative Function and Pattern in Domestic Water Transport. As a result, the function and responsibilities of the administrative department affiliated with or established by the Ministry of Communication in the Yangtze and Zhujiang systems, and the competent transport departments of the provinces, autonomous regions, and municipalities directly under the Central Government have been adjusted. The approval system administered mainly by the Ministry of Communications has been limited to five aspects while administrative relationships, tasks; a procedures have been further clarified. The administrative schemes for domestic waterway transport have been reformed and registration now suffices in lieu of approval for such projects as initiating or adjusting container feeder lines or passenger lines, building, purchasing, or demise chartering carrying vessel (other than passenger ships or liquefied dangerous cargo carriers), shifting a vessel from international to domestic services, etc.

41) Ibid. art. 12.

42) Section 11, item A, Schedule of Specific Commitments on Services List of Article II MFN Exemption("schedule").

5.1.3 Reform and Standardization in the Domestic Shipping Market

In order to ensure water traffic safety, provide a sound market environment for operators, and secure prompt, continuous, healthy, and stable development of Chinese shipping industry, the Ministry of Communication conducted a national program of reform and standardization in the shipping market in 2001 and 2002. Its primary effects in the domestic shipping market are now evident, enable further refinement.

By the end of 2002, all enterprises and operators engaged in the carriage of passengers, liquefied dangerous goods, and even general cargo had been evaluated in accordance with requirements contained in Order No.1 issued by the Ministry of Communications in 2001. Enterprises or operators that failed were obliged to restructure or correct their shortcomings within the time specified, or else lose their authority for operations in the shipping market.

5.2 Auxiliary Service to Container Shipping Industry.

In the 2004 Catalogue, several new sectors were opened to Foreign service suppliers. Regulation maritime auxiliary services, foreign investors were for the first time encourage to invest in storage and warehousing, shipping agency, freight forwarding agency, and cargo handling services.⁴³⁾ Foreign investors are allowed to engage in shipping agency services and cargo handling services only through joint ventures; in shipping agency, such foreign investment shall not exceed 49%.

43) Ibid. 6, item 6

In freight forwarding, it may only account for 50% at the beginning, but foreign majority investment and wholly foreign-owned companies are to be permitted after one and three years respectively following Chinese accession. These regulations not only fulfill Chinese commitments,⁴⁴⁾ they exceed them. For example, China committed in the Schedule to allow foreign investors to engage in storage and warehousing services only by means of joint ventures in which foreign investment did not exceed 49%. Foreign interests were to be allowed majority ownership within one year after Chinese accession and wholly foreign-owned subsidiaries were to be allowed after three years. Nevertheless, these limitations have already been lifted.⁴⁵⁾

In November 2002, MOFTEC issued the Regulation on the Administration of International Freight Transport Agency with Foreign Investment⁴⁶⁾ to replace the Rules on the Approval of International Freight Transport Agency with Foreign Investment, which had been in 1995. The new regulation incorporated Chinese commitments in this field and detailed the requirements for establishment of an international freight transport agency by foreign investors. For the first time, foreign investors were allowed in principle to establish wholly foreign-owned enterprises in this sector, but precisely when they could do so was left for further

44) The foresaid changes fully implement Chinese commitments. See 11, item H, supra note 57.

45) Catalogue 2004(The Foreign Investment Industrial Catalogue was first promulgated on June 20, 1995, amended on March 31, 2002, and mostly recently updated on November 30, 2004. This version became effective as of January 1, 2005. The old and new version are hereinafter referred to as the 1995 Catalogue and the 2004 Catalogue respectively). 6, item 3.

46) Promulgated by MOFTEC on December 11, 2002 and available from the Hong Kong Trade and Development Council at <http://www.tdctrade.com>.

regulation by competent authorities. Meanwhile, only equity joint ventures and contractual joint venture in which Chinese party enjoys majority ownership is allowed.⁴⁷⁾

5.3 Transparency

One of the most serious problem of Chinese legal system has been its lack of transparency. There were many ambiguous expressions in Chinese laws, regulations, and administrative rules, which made them difficult to interpret by those interested, both domestic and foreign. In order to remove these barriers, the newly published Regulations on International Maritime Transportation specify in detail what is required for the establishment by foreign investors of various kinds of shipping companies in China. The regulations speak to the documents required, the authorities participating, the length of reviewing period, the permitted scope of business and restricted activities.

5.3.1 Entry Requirements

As the chart on the next page illustrates, the Regulations on International Maritime Transportation detail the different requirements for foreign shipping services suppliers establishing different types of service enterprise in China. This figure clearly shows the different qualifications for different services sub-sectors. Provided that Foreign services suppliers meet these requirements, they may apply directly to the competent authorities.

47) Ibid. art. 4

5.3.2 Scope of Business:

For the scope of business allowed these kinds of investing enterprises, the regulations on International Maritime Transportation adopt different approaches for different sub-sectors. Regarding international shipping service and non-vessel-operating services, the Regulations prohibit the following actions by foreign investors:

- Providing service at lower freight rates than normal and reasonable ones, thereby prejudicing fair competition;
- Offering secret rebates to shippers, not reflected in the book-keeping, for the purpose of soliciting cargoes;
- Arbitrarily taking advantage of a dominant position to impose discriminatory freight rates or other restrictive terms detrimental to the other party to the transaction;
- Committing any other actions detrimental to the other party to the transaction or the good order of the international shipping market.⁴⁸⁾

48) Regulations on International Maritime Transportation, supra note 50. art 27.

<Table 5-1> Regulations on International Maritime Transportation

<i>Sectors</i>	<i>Requirements for Entrance</i>
International Shipping Services	<ol style="list-style-type: none"> 1. Vessels suitable for international shipping (must include vessels of Chinese nationality); 2. Compliant with the State's technical standards for maritime traffic safety; 3. Having B/L, passenger tickets or multi-modal transportation documents; 4. Senior executives with the requisite professional qualifications.
Non-Vessel-Operating services	<ol style="list-style-type: none"> 1. Formalities for the registration of B/L; 2. Submission of surety bond: RMB 800,000, and an additional sum of RMB 200,000 for each subsequent branch.
International Shipping Agency Services	<ol style="list-style-type: none"> 1. At least two senior executives with no less than three years' experience in international maritime transportation business operations; 2. Having fixed places of business and necessary business facilities.
International Ship Management Services	<ol style="list-style-type: none"> 1. At least two senior executives with no less than three years' experience in international maritime transportation business operations; 2. Staff members in possession of master's credentials and chief engineer's credentials appropriate to the types of ships and trading zones under their management; 3. Having equipment and facilities appropriate to international ship management services.

Thus foreigners investing in these two areas may engage in any other business, that is, any business not prohibited. Regarding international shipping agency services and international ship management services, however, the Regulations specify in detail the only business permitted foreign investors.

<Table 5-2> Scope of Business of International Shipping Agency Services

<i>International Shipping Agency Services⁴⁹⁾</i>	
1.	Managing the formalities for ship's entry into or departure from ports, arrange pilotage, berthing and loading & discharging,
2.	Singing B/L or carriage contracts and accepting freight-space booking on behalf of the carriers;
3.	Managing customs formalities for vessels, containers and shipments,
4.	Canvassing cargoes, arranging shipments and attending to procedures for shipments and transshipment of cargoes and containers;
5.	Collecting freight and settling payment on behalf of the principle;
6.	Arranging passenger transport and attending to procedures for transport of passengers by sea;
7.	Other pertinent business.

<Table 5-3> Scope of Business International Ship Management Services

<i>International Ship Management Services</i>	
1.	Conducting sales and purchases of vessels, chartering vessels, and managing other assets relating to vessels;
2.	Managing ship engineering functions, handling navigational affairs, and arranging ship repair and maintenance;
3.	Recruiting and training mariners and assigning them to ships;
4.	Performing other services for maintaining the technical standards of vessels and ensuring their proper navigation.

Foreign operators who invest in these two sub-sectors are not allowed to engage in any business not listed above. While the two regulatory approaches are antithetical, both make clear to foreign investors the boundaries to business opportunities in China in these sub-sectors and therefore enable investment planning.

Through a large and multifaceted initiative of legislative and administrative reform, China has endeavored to carry out its WTO commitments in the sector of

49) Ibid. art. 29

maritime services. By the 23rd of September 2005, 158 international liner companies, 1105 shipping agencies and 1664⁵⁰⁾ Non-Vessel-Operating companies had been approved by the competent authorities in accordance with the new rules and regulations. A new three-dimensional system for the administration of shipping has become gradually into shape, covering three independent but connected services sector: maritime transport, ports, and auxiliary services.

5.4 Impacts on Chinese Container Shipping Industry

Economic globalization will exert significant influence on world economy as well as on world shipping, which is oriented towards openness. The development of multinationals in turn contributes to the health and well-being of world shipping. What is required of shipping corporations is to expand cross-border operation through mergers and acquisitions and to provide global shipping services. China's shipping is becoming an important link in the chain of global shipping. Liner carriers of China can launch mergers and acquisitions on a larger scale and can develop third or even fourth party logistics business. Foreign liner shipping companies will not be subject to any restrictions to set up subsidiaries in China, and they can well penetrate the Chinese market with their asset and technological advantages.

Analysis by officials of the Ministry of Communications indicates that Chinese international shipping industries will see the following

50) The lists of those engaged in international liner and non-vessel-operating services are available at <http://www.moc.gov.cn>.

changes:⁵¹⁾

1) The opening of Chinese shipping market will be deepened and accelerated while more foreign capital will be allowed to enter into this market. Parts of the field inaccessible for foreign investment in the past will be gradually opened in the future, for example distribution service, international shipping agency and setting-up branches of foreign shipping companies in China.

2) The institutionalization process of the shipping market will be expedited. In case that the combination of Chinese shipping market with the world market will be promoted by the joining of foreign capital, China must step up the market institutionalization to impose supervision on the market entry and market behaviors of foreign companies in accordance with the Chinese laws and regulations

3) Chinese shipping companies will enjoy a better environment in the competition of world market. In the face of the increasingly fierce competition, some of the Chinese shipping companies will have to tap for new markets, such as to ship goods for a third party in order to optimize China's international shipping structure. Furthermore, China will be able to enjoy more initiative rights in international talks for shipping business. As foreign companies will get more benefit from the Chinese market after getting their entry permission.

4) Demand for shipping will be increased along with the growth of

51) www.people.com.cn

international trade volume. With China's entry into the WTO, the domestic market will be further opened with the international environment for foreign trade improved. China will by then has more to do in the work division of the world economy with the Chinese economy depending more on the world market at the same time. All these changes will by and large promote the development of the Chinese industries with comparative advantages and help raise greatly the transport volume in international trade, thereby boosting the development of the Chinese shipping industry.

5) The market competition will be more severe. While some of the protective measures for domestic market gradually lose their functions after China's accession into the WTO, foreign capital will take more shares in the market distribution, ship agency and other fields. By then, those Chinese enterprises low in management level and service quality and weak in competition might be kicked out of the market.

5.5 Impacts on Foreign Shipping Services Providers

As discussed above, the new system employs modern regulatory models, clarifies past ambiguities, and incorporates Chinese commitments to the WTO. It is obvious that China expects to provide a fair, efficient, and stable competitive environment for Foreign services suppliers.

5.5.1 More Liberal Treatment of Foreign Service Suppliers

With amendments of the 1995 Guidance and the 1995 Catalogues,⁵²⁾ as well as Chinese market access commitments, foreign investors can expect more opportunities for participation in more maritime service sectors/sub-sectors. In keeping with Chinese WTO commitments, the encouraged category in the 2004 Catalogue was expanded from 186 to 256 fields and the restricted categories reduce from 112 to 78. China has opened up many fields for the first time to foreign investors and has expanded their access to others. For example, foreign investors are encouraged to establish enterprises for international multi-modal containerized transportation, carriage of goods by road, and freight-forwarding agency.⁵³⁾ The relevant regulation permitted foreign investors majority ownership after 2002. Wholly foreign-owned enterprises will be permitted after December 11, 2005(For carriage of goods by rail, the transitional period is longer; wholly foreign-owned enterprises will not be permitted until December 11, 2007.⁵⁴⁾)

Other sectors now open to foreign investors, albeit with some

52) The Guidance of Foreign Investment Orientation was first promulgated on June 20, 1995, amended on February 11, 2000, and became effective as of April 1, 2002(these are hereinafter referred to as the Guidance 1995 and the Guidance 2000 respectively).

53) 2004 Catalogue Annex supra note 60, at 1, item7 & 8, and 2, art. 8, item 2.

54) Ibid. 2, art. 3.

restrictions. For the time being, foreign investment may not exceed 49 percent of that for the capitalization of waterway Transportation Company, and this restriction applies also to maritime agency services.⁵⁵⁾ According to the 2002 Catalog, only equity or contractual joint ventures are permitted for ocean shipping tally service.⁵⁶⁾ Even with these restrictions, recent changes have provided more investment possibilities for foreign investors.

5.5.2 A more Stable Environment for Investment

In order to better protect the interests of service suppliers, the principle of "fair competition" has been embraced and emphasized during the recent process of legal reform. For example, the Regulations on International Maritime Transportation now prohibit the following:

- *Liner conference agreements, operating agreements, or freight rate agreements concluded among international shipping operators engaged in international liner services in which Chinese ports are involved and which can be detrimental to fair competition;*
- *service activities of a consortium set up by international shipping operators engaged in international liner services through agreements that involve a shipping volume exceeding 30% of the aggregate shipping volume for one consecutive year on one*

55) Ibid. 2, art. 2 and art 8, item 1.

56) Ibid. 2, art. 8, item 3.

particular shipping line to and from Chinese ports and which cant be detrimental to fair competition;

- *any forbidden act listed in Table;*
- *any other act detrimental to fair competition in international shipping market.⁵⁷⁾*

Should there be cause to suspect one of these transgressions, and interested party may apply to the competent communication department of the State Council for the assignment of an investigation group. The person under investigation is entitled to notice of the purpose, reason, time limit etc, of the investigation. In accordance with the transparency principle, the Regulations on International Maritime Transportation specify that the investing period shall not exceed one year, but this can be extended by half a year by the competent organ.⁵⁸⁾ After the investigation, the investigating group shall make a conclusion and notify the person under investigation and the interested parties thereof in writing. If the acts under investigation are found to damage fair competition, the competent organ is obliged by the Regulations to take prohibitive or restrictive measures such as ordering the amendment of relevant agreements, limiting the frequency of liner services, suspending freight rates, suspending the filing of freight rates, or ordering the revision of relevant materials. The party concerned shall have the right to

57) Regulations on International Maritime Transportation, supra note 50, art. 32.

58) Ibid. art. 37.

hearing on relevant matters prior to any decision by the relevant organ to take such measures.

This is the really the first time that China has so clearly incorporated the principle of transparency into its legal system. It should reassure Foreign service providers of a more open and competitive market in China, while at the same time it illustrates Chinese commitment to modernizing the legal system and entrenching the rule of law.⁵⁹⁾

5.6 Problems with Chinese Container Shipping Policy

5.6.1 Market Access

Although China has made many reforms in the shipping sector following its commitments to the WTO in the Schedule of Specific Commitments,⁶⁰⁾ foreign operators should also be aware that the Chinese government has an obligation to hold the majority share in an enterprise in many fields that may have a great impact on the national economy and people's livelihood. For example, the share of foreign investors in Chinese-foreign equity joint ventures engaged in international shipping services and international shipping agency

59) Kevin X. Li, Kevin Cullinane, Hong Yan and Jin Cheng "Maritime Policy in China after WTO: Impacts and Implications for Foreign Investment" *Journal of Maritime Law & Commerce*, Vol.36, No.1, January, 2005.

60) See supra note 57

services cannot exceed 49%,⁶¹⁾ which means that the majority share must be held by the Chinese party. The regulations of Maritime Transportation also require that "the chairperson of the board of directors and the general manager of a Chinese-foreign equity joint venture or Chinese-foreign contractual joint venture engaged in international shipping service be appointed by the Chinese party."⁶²⁾

Meanwhile, some new restrictions may raise new barriers to foreign service suppliers. For example, Article 12 of the International Provisional Regulations on the Examination and Approval of Wholly Foreign-Owned Shipping Company requires that Chinese employees comprise at least 85% of the staff in any wholly foreign-owned shipping company.⁶³⁾

Formerly, the Regulation on the Approval of Foreign-Invested International Freight Transport Agency required the same qualifications for both Chinese party and any foreign party, i.e., that each "shall have engaged in the international freight transport agency services for at least three years.⁶⁴⁾" However, the Regulation on the Administration of International Freight Transport Agency with Foreign Investment, which replaced the former regulation in 2002, requires of foreign parties three years' experience in the international freight

61) Article 32, supra note 63.

62) Ibid.

63) This was not regulated in the old notice, supra note 54.

64) Item 2, art. 5.

transport agency services, but require of Chin's party only one year's experience.⁶⁵⁾

In addition, compared with the developed countries, Chinese open policy is not completed, for example compare with U.S and E.U, foreign investors still cannot hold the majority of the company. It may effect foreign investors invest in Chinese shipping industry.

5.6.2 Transparency

Despite the attractiveness and the reforms that have been taking place in China a number of impediments have also been encountered by foreign companies. The first issue involves the bureaucratic administrative procedures, inefficiencies in the co-ordination of government departments, unclear or contradictory laws and a variety of other problems arising from these issues. In addition it seems that the post-approval monitoring evaluation mechanisms are weak. The result is again friction between foreign investors and the interests of local investors and the host country. While a number of tax incentives are granted to foreign affiliates, domestic enterprises enjoy preferential treatment such as easy access to loans and low priced raw materials. This cause unfair competition and market distortions and may be looked upon as an impediment to foreign investment.

It is also difficult to decide upon the best time for making the

65) See supra note 61, Item 1 and item 2, art. 5.

investment, whereas competition from local companies and other foreign entrants can be quite stiff, particular as new entrants have to take some time to adapting to the new environment. This raises the issues of timing market entry, which will depend on external factors but also on the company's strategic orientation.

One of the main barriers to the conduct of smooth operations seems to be communication with government departments. It was felt that the traditional structure of government in China is complex and bureaucratic something that makes it difficult to tackle problems faced by private enterprises swiftly. One company found itself working toward the development of a special *guanxi* relationship with government departments as a means towards solving the problems faced. Trading practices in China are also of concern to shipping company. In particular interviewees seem to be concerned with the existence of a black market where vast sums of money are being lost to rogue traders and the inability of the government to take decisive action against such practices⁶⁶).

5.6.3 International Shipping Legislation Progress

Chinese International shipping Legislation is relatively backward compared with developed countries, the procedure is complex, the

66) Photis M. Panayides, "International Market Entry Strategies in China: Lessons from Ocean Shipping and Logistics Multimodal," *Shipping in China*, pp135-166.

time are extended, the legal standard does not have foresightedness, and standards lags fall below international benchmarks for marine transportation practice. For example, "Maritime law", was only revised in 1993 after a period of around of 40 years, it has been revised 25 times, but still has many deficiencies. Although certain aspect of "Maritime Affairs Lawsuit Special Procedural Law" and the "Arbitration Act" the "Civil Procedure Law" have already been decided in advance, but the legal formulation is still not completed. The "Navigation Haulage", "Ship Law", "Crew Laws", have still not been revised.⁶⁷⁾

The legislative technical level is low, systems have been inadequately implemented, in particular in the marine transportation service administration area; The legislative efficacy is low, the authority of officials is limited and there are many hindrances to effective and efficient, for example in marine transportation, the regulations and laws of forwarder service and ship agent service in China formulated by the Ministry of Commerce the Ministry of Communication are administered separately. Moreover, the local laws and regulations and the national laws and regulations are offer in conflict, which can be detrimental to the entire marine transportation service legal framework's unity and validity.

67) Xianwei, Peng "An analyse of Chinese Shipping Service Trade Law's Adjustment and Perfection after China Joining the WTO" 2002.

5.6.4 The International Competitiveness

As discussed above in Chapter 2, we used Porter's Diamond Model to examine China shipping industry's competitive advantage; we can find Chinese shipping Industry development very fast, but its international competitive power still weak. Currently there are 310 shipping companies registered in China and engaged in international shipping, and most of them except COSCO, China shipping Group and Sinotrans Group, tend to be too small, with the most of them are single-ship companies. Shipping is a big risk industry, if the shipping company scale is too small, Lacks the ability of resistance risk in the market competition, and cannot compete with the foreign shipping companies.

In addition, in Chinese shipping market foreign shipping company hold 70% market share, and Chinese shipping companies only hold 30% market share, from these figure we can see most Chinese foreign trade cargoes transport by foreign shipping company. With China has been a member of WTO, China will further open its shipping market, and more and more foreign shipping companies will enter into Chinese market, the market competition will be more severe than before.

Also the transport capability structure of Chinese international shipping fleets and the enterprises' structure are illogical. The ships' technical level is low, and the ships get older, the old age ship and

the over-age ship proportion reaches 41%, the coast reaches as high as 68%, The Chinese fleet average tonnage is lower than the world average level, especially the tonnage of tanker is the smallest, and steamship are few. Has not yet a form in a big, medium, small reasonable disposition tonnage structure. International shipping company's management system is not flexible; also such international economic and political influences subjective reasons makes Chinese international shipping companies were in the inferior position in the international competition.

Chapter 6

Conclusion

Shipping is a global business and open to global competition. With globalisation, various entry barriers to markets are going down or completely removed, while cooperation and competition has become essential to be competitive in the global marketplace. Now globalisation means deregulation, free and open competition, and equal access to market. At the global level, the WTO negotiations on trade in services are going under way. The WTO agenda is to seek better access for maritime transport providers in foreign markets and to seek transparent and predictable regulatory environment for shipping service.

The primary purpose of shipping policy is to maintain business environment of free and fair competition of its own national forms on an equal footing with the fleets of other countries. Furthermore it creates competitive advantage for its own shipping fleet in the global industry; efficient ship financing can be a strong policy instrument for acquiring the national shipping fleet. Legal and administrative measures such as financial support arrangements and tax incentives are focus to foster and encourage its own shipping industry.

For a country to develop its own shipping industry, the government has to examine its own competitive standing of domestic economic factors and

policy objectives of the national economy and the shipping industry according to its economic development stage. Then the government can choose shipping policy targets and strategic instruments to develop its own shipping industry. As the economy makes progress over time, it may modify the direction and contents of shipping policy to create and maintain competitive advantage.

After twenty years of constant effort, Chinese program of economic reform is widely acknowledged to have achieved remarkable results. Now, as a full member of the WTO, China is embarked on another initiative, reform of its legal system, which should have an equally important impact on Chinese economy and society in the future.

We think that after joining the WTO, possible development trend of Chinese shipping policy is as follows:

1. Speed up the construction of maritime transport infrastructure facilities

Providing more efficient and better service for Chinese and Foreign shipping companies. China will further improve its maritime transport infrastructure facilities to meet the demand of economic development and foreign trade. In order to strength Chinese international shipping competitiveness, China will restructure with an eye to the construction of the Shanghai International Shipping Centre, the Yangshan deep-water port and the Shanghai combination ports; also China will develop port clusters at

the Yangtze River Delta, the Pearl River Delta and around the Bohai Bay, and form rational port container transport system hub port and feeder port. Meanwhile, China should further adjust fleet's type and age structure, improve fleet's technical level, develop appropriate disposition of big, medium and small tonnage structure.

2. Accelerate the shipping legislation, standard shipping market

The institutionalization process of the shipping market will be expedited. In case that the combination of Chinese shipping Market with the world market will be promoted by the joining of foreign capital, and China must step up the market institutionalization to impose supervision on the market entry and market behavior of foreign companies in accordance with the Chinese laws and regulations. Chinese legal system should be in conformity with international practices and encourage fair competition. The process should be accelerated to improve or formulate laws to meet the WTO rules and international practice, to create an environment of competitiveness, opening and transparency for the international shipping industry. The Chinese government should endeavor create a favorable shipping market environment for fair competition, and safeguard the legitimate rights and interests of both domestic and foreign shipping businessmen and speed up revising the "Navigation Haulage", "Ship Law", "Crew Laws".

3. Further Opening up to the outside

Since the accession to the WTO, the Chinese government has been fully

fulfilling its commitments on international maritime transport services, constantly widening the opening-up to the outside world, and actively participating in the bilateral and multilateral maritime transport cooperation and exchanges. Chinese shipping policies are open and transparent, and the market competition mechanism is being gradually improved. China has been elected Category A Member of the Council of the International Maritime Organization for the eighth time consecutively. In the past two years China signed Maritime Agreements with the United States and the EU respectively, which symbolized the maritime cooperation between China and the US and the EU entering into a new era, and also symbolized Chinese international maritime transport market being further made compatible with the international practices. In the future Chinese shipping policy will more open and transparent to welcome foreign investors to make investments in China in the construction of port facilities and in the operation of stevedoring activities, and welcome them to invest in operating international maritime transport and related auxiliary business activities.

Some suggestions for Chinese shipping Companies:

1. Development of Inter-modal Transport

The increase volumes of containers moving through the ports will place great stress on the land transport interface and generate a need for faster and more efficient intermodal connections to the hinterlands. At the same time, the demand of shippers for "seamless" logistics is likely to continue and intensify. In the meantime, Chinese government welcomes foreign investors

to operate in China comprehensive logistics services and offer the entire-chain distribution and other value-added services.

2. Internal reorganization

The WTO has requested Chinese Shipping companies to get much closer to the world standard. To strengthen the competitive advantage, Chinese shipping companies should, referring to the successful organization structure of major foreign shipping companies, reasonably adjust their own internal organization by abolishing useless department and working out strict and practical management rules and regulations in the company.

Also as we discussed in Chapter 2 that Chinese two giant shipping companies (COSCO and China Shipping) are state-owned companies, so Chinese Shipping companies should separate the administration from government and its control over the operation of state-owned enterprises so as to let these state-owned companies learned to survive and develop market-oriented modern strategies.

3. M&A⁶⁸), Consolidation Strategy

Maritime transport is essentially related with a global phenomenon, at least with regards to overseas shipping. It has developed in step with the growth of world trade, providing a critical infrastructure for trade. And as an occupation involving the navigation of the seven seas,

68) Mergers & Acquisitions.

maritime transport has always been a global industry⁶⁹⁾. In overseas container transport as well, many container lines companies are under pressure of lower freight rate due to excess capacity. The container shipping industry has adopted a rationalization strategy which aims at pooling its resources through consolidation and mergers. In order to go with the tide of globalization and to compete with more and more transnational liner shipping companies, and in line with the guiding ideology of scale transport put forward by Chinese government, Chinese shipping companies should take action on "Weak-Strong M&A and Strong-Strong Consolidation" strategy.

4. Service Quality Improvement

The Shipping Industry is a kind of service industry. The service with high quality, efficiency and economy is the key to win market share. Currently, it is getting more and more difficult to occupy the extra market share because the accession to the WTO brought more and more competition. There is a strange phenomenon: Why foreign competitors have still occupied a great amount of the market in spite of charging the higher freight rate? The reason is just that they offer high quality service. Under such severe situation, what Chinese container companies could do is only to press forward despite the difficulties and to make great efforts to provide more attractive and higher quality service. And the qualified services should be

69) Sato, Hiroyuki, *Management Strategy of Container Liner Shipping in the age of Globalisation*, proceeding of the 2nd International Gwangyang Port Forum, April 24-26, 2002, pp 115-125.

provided not only at homeland of China but also abroad. Anyway, the efforts of companies are the fundamental guarantee of improving shipping competitiveness.

A more open and dynamic shipping market in China is ready to welcome investor and operators all over the world to come to start and increase their business. We wish that in Chinese maritime transport market filled with business opportunities today, both domestic and foreign shipping businessmen would collaborate with each other towards win-win, mutual benefit and greater commercial gains.

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Appendix 1: Regulations of the People's Republic of China on International Maritime Transportation ⁷⁰⁾

(Adopted at the 49th Executive Meeting of the State Council on December 5, 2001, promulgated by Decree No. 335 of the State Council of the People's Republic of China on December 11, 2001, and effective as of January 1, 2002)

Chapter I General Provisions

Article 1

These Regulations are formulated for the purposes of regulating international maritime transportation operations, protecting fair competition, maintaining the order of international maritime transportation market and safeguarding the lawful rights and interests of the relevant parties involved in international maritime transportation.

Article 2

These Regulations are applicable to international maritime transportation business operations to and from the ports of the People's Republic of China as well as the auxiliary business operations relating to international maritime transportation.

Auxiliary business operations relating to international maritime transportation, as referred to in the preceding paragraph, include the businesses relating to international shipping agency services, international ship management, loading and unloading, storage and warehousing of international shipments and international maritime container freight station and container yard services, etc.

Article 3

The principles of honesty and credibility shall be followed in international maritime transportation business operations and auxiliary business operations relating to international maritime transportation, the operations shall be conducted lawfully under fair competition.

Article 4

The competent communications department of the State Council and competent communications departments of relevant local people's governments shall, in accordance with the provisions of these Regulations, supervise and administer international maritime transportation business operations, and shall exercise supervision and administration over auxiliary business operations relating to international maritime transportation.

70) www.moc.gov.cn

Chapter II Operators of International Maritime Transportation and Auxiliary Businesses Thereof

Article 5

To be engaged in international shipping services, the following conditions shall be met:

- (1) having vessels suitable for employment in international shipping services, among which there must be vessels of Chinese nationality;
- (2) vessels under employment shall be in compliance with the technical standards for maritime traffic safety as set forth by the State;
- (3) having bills of lading, passenger tickets or multi-modal transportation documents;
- (4) having senior executives with the professional qualifications as set forth by the competent communications department of the State Council.

Article 6

To be engaged in international shipping services, an application shall be submitted to the competent communications department of the State Council, and the relevant documents in compliance with the conditions set forth in Article 5 of these Regulations shall be attached thereto. The competent communications department of the State Council shall, within 30 days from the date of acceptance of the application, complete the examination and verification and make a decision of granting or not granting permission. If the permission is granted, a Permit for Operation of International Shipping Services shall be issued to the applicant, or, if no permission is granted, the applicant shall be notified in writing and given the reasons therefor.

In examining and verifying the application for international shipping services, the competent communications department of the State Council shall take into account the policies of the State for the development of international shipping industry and the actual competition situations in international shipping market.

Anyone who applies for both international shipping services and international liner services shall concurrently submit the relevant documents as provided for in Article 17 of these Regulations, which shall be examined, verified and registered by the competent communications department of the State Council.

Article 7

To be engaged in non-vessel-operating services, the formalities for registering bill of lading shall be undergone with the competent communications department of the State Council and surety bond shall be paid therewith.

Non-vessel-operating services, as referred to in the preceding paragraph, mean such international maritime transportation business operations in which a non-vessel-operating common carrier accepts shipments from the shipper as a carrier, issues its own bills of lading or other shipping documents, procures through the international shipping operator the carriage of goods by sea against payment of freight by the shipper, and assumes the responsibilities of a carrier.

To be engaged in non-vessel-operating services within Chinese territory, an enterprise as legal person shall be established according to law within Chinese territory.

Article 8

A non-vessel-operating common carrier shall, at the time of making an application for the registration of bill of lading to the competent communications department of the State Council, submit the relevant documents certifying that the required surety bond has been paid in accordance with the provisions of these Regulations.

The surety bond as referred to in the preceding paragraph shall be in a sum of RMB 800,000 yuan, and an additional sum of RMB 200,000 yuan is required for each subsequent branch. The surety bond shall be paid to a designated bank account opened at a bank within Chinese territory.

The surety bond shall be used for the payment of debts incurred from non-performance or improper performance of obligations by the non-vessel-operating common carrier or used for payment of fines. The surety bond and the interests accrued thereon belong to the non-vessel-operating common carrier. The designated account shall be subject to the supervision by the competent communications department of the State Council.

The competent communications department of the State Council shall complete examination and verification of the application for bill of lading registration and the certifying documents for surety bond within 15 days from the date of receipt thereof, and shall, if the application documents are authentic and complete, grant registration and notify the applicant of the result thereof, or, if the application documents are inauthentic or incomplete, grant no registration and notify the applicant in writing and give the reasons therefor. The competent communications department of the State Council shall publish the names of the carriers of non-vessel-operating services who have registered their bills of lading.

Article 9

To be engaged in international shipping agency services, the following conditions shall be met:

(1) having at least two of senior executives with no less than three years' experience in international maritime transportation business operations;

(2) having fixed places of business and necessary business facilities.

Article 10

To be engaged in international shipping agency services, an application shall be submitted to the competent communications department of the State Council, and the relevant documents in compliance with the conditions set forth in Article 9 of these Regulations shall be attached thereto. The competent communications department of the State Council shall complete examination and verification within 15 days from the date of receipt of the application. If the application documents are authentic and complete, registration shall be granted and the applicant shall be notified of the result, or, if the application documents are inauthentic or incomplete, no registration shall be granted and the applicant shall be notified in writing and given the reasons therefor.

Article 11

To be engaged in international ship management services, the following conditions shall be met:

(1) having at least two senior executives with no less than three years' experience in international maritime transportation business operations;

(2) having staff members in possession of Master's credentials and chief engineer's credentials appropriate to the types of ships and trading zones under their management; and

(3) having equipment and facilities appropriate to international ship management services.

Article 12

To be engaged in international ship management services, an application shall be submitted to the competent communications department of the people's government of a province, an autonomous region or a municipality directly under the Central Government where the proposed business is to be located, and the relevant documents in compliance with the conditions set forth in Article 11 of these Regulations shall be attached thereto. The competent communications department of the people's government of a province, an autonomous region or a municipality directly under the Central Government shall complete examination and verification within 15 days from the date of receipt of the application. If the application documents are authentic and complete, registration shall be granted and the applicant shall be notified of the result, or, if the application documents are inauthentic or incomplete, no registration shall be granted and the applicant shall be notified in writing and given the reasons therefor.

Article 13

After being granted permission or registered as provided for in these Regulations, international shipping operators, non-vessel-operating common carriers, international shipping agents or international ship management operators shall, by presenting relevant certifying documents, go through registration formalities with enterprise registration organs according to law.

Article 14

International shipping operators, non-vessel-operating common carriers, international shipping agents or international ship management operators shall not provide others for using with their legally obtained business operation qualifications.

Article 15

Where, after having obtained the qualifications for business operation in accordance with the provisions of these Regulations, an international shipping operator, a non-vessel-operating common carrier, an international shipping agent or an international ship management operator no longer meets the conditions set forth in these Regulations, the competent communications department of the State Council, or the competent communications department of the people's government of a province, an autonomous region or a municipality directly under the Central Government shall immediately cancel such operator of the qualifications for business operation.

Chapter III Business Operations of International Maritime Transportation and Auxiliary Businesses Thereof

Article 16

An international shipping operator who intends to be engaged in international liner services to and from the ports of the People's Republic of China shall acquire the qualifications for operation of international liner services in accordance with the provisions of these Regulations.

Those who have not acquired the qualifications for the operation of international liner services shall not be engaged in international liner services, nor publish their liner shipping schedules, nor accept space booking.

Where the operation of international liner services is conducted through joint employment of vessels, slot exchange of freight spaces or joint operation of services, the provisions in Paragraph one of this Article shall apply.

Article 17

To be engaged in international liner services, an application shall be submitted to the competent communications department of the State Council, and the following documents shall be attached thereto:

- (1) the name of the international liner service operator, its registered place of business, photocopy of its business license, and the information of its main investor(s);
- (2) the names and identification documents of the operator's main management staff ;

- (3) the particulars of the vessels under operation;
- (4) the description of the intended shipping lines, shipping schedules and ports of call along the shipping lines;
- (5) the freight tariff; and
- (6) the sample of its bill of lading, passage ticket or multi-modal transport documents.

The competent communications department of the State Council shall complete examination and verification within 30 days from the date of receipt of the application for international liner services. If the application documents are authentic and complete, registration shall be granted and the applicant shall be notified of the result, or, if the application documents are inauthentic and incomplete, no registration shall be granted and the applicant shall be notified in writing and given the reasons therefor.

Article 18

An international liner operator who has obtained the qualifications for international liner services shall start such services within 180 days from the date of acquirement of its qualifications, and, subject to the approval of the competent communications department of the State Council, such time limit may be extended for another 90 days in case of force majeure. In case of failure to start the liner services within the time limit, the qualifications for international liner services shall be invalid upon the expiration thereof.

Article 19

New international liner services, liner services under suspension, or change of carrying vessels or schedules for international liner services shall be made known to the public 15 days in advance and shall be reported to the competent communications department of the State Council for the filing within 15 days from the date of occurrence.

Article 20

The freight rates of international shipping operators and non-vessel-operating common carriers engaged in the business of international liner services shall be filed in specified format with the competent communications department of the State Council. The competent communications department of the State Council shall designate a special body for handling the filing of freight rates.

The freight rates submitted for the filing shall include tariff rates and negotiated rates. Tariff rates refer to the freight rates shown in the tariff of international liner service operators and non-vessel-operating common carriers; while negotiated rates refer to the freight rates agreed upon between international liner service operators and shippers or non-vessel-operating common

carriers.

The tariff rates shall come into effect 30 days after the day upon which the tariff rates have been accepted for the filing by the competent communications department of the State Council. The negotiated rates shall come into effect 24 hours after acceptance for the filing by the competent communications department of the State Council.

International liner service operators and non-vessel-operating common carriers shall implement the effective tariff rates that have been submitted for the filing.

Article 21

When concluding agreements on negotiated rates with non-vessel-operating common carriers, international liner service operators shall make sure that such non-vessel-operating common carriers have registered their bills of lading and made the required surety bond in accordance with the provisions of these Regulations.

Article 22

Photocopies of liner conference agreements, service operation agreements and freight rate agreements concluded between international shipping operators engaged in international liner services in which Chinese ports are involved shall be submitted to the competent communications department of the State Council within 15 days from the date of conclusion of such agreements.

Article 23

An international shipping service operator shall, within 15 days from the date of occurrence of any of the following circumstances, make a report thereon to the competent communications department of the State Council for the filing:

- (1) termination of services;
- (2) reduction of carrying capacity;
- (3) changes in bills of lading, passenger tickets or multi-modal transport documents;
- (4) establishment of overseas branches or subsidiaries for international shipping services; or
- (5) vessels under its ownership to be registered abroad, and flying foreign flags.

Where an international shipping operator makes any increase to its existing number of vessels, the added vessel(s) shall meet the safety and technical standards set forth by the State, and the same shall be reported to the competent communications department of the State Council for the filing 15 days prior to the operation of such vessel(s). The competent communications department of the

State Council shall issue a document certifying the filing within three days from the date of receipt of the documents for the filing.

Other Chinese enterprises shall, under any of the circumstances specified in Subparagraphs (4) and (5) of Paragraph 1 of this Article, undergo the formalities for filing in accordance with the provisions of Paragraph 1 of this Article.

Article 24

In case of merger or acquisition among international shipping operators, the merger or acquisition agreement shall be submitted to the competent communications department of the State Council for examination and approval.

The competent communications department of the State Council shall, within 60 days from the date of receipt of the merger or acquisition agreement submitted by the international shipping operators, conduct examination and verification, taking into consideration policies of the State for the development of international shipping industry and the situation of competition prevailing in the international shipping market, and make a decision either approving or disapproving such agreement, and shall notify the international shipping operators of the result in writing.

Article 25

In case of collection of freight and other related fees, or collection of freight and other related fees on behalf of others within Chinese territory, international shipping operators, non-vessel-operating common carriers and international shipping agents shall produce to the payers the invoices uniformly prepared by Chinese taxation authorities.

Article 26

No one shall be engaged in non-vessel-operating services without registering its bill of lading and paying required surety bond in accordance with the provisions of these Regulations.

Article 27

None of the following acts may be committed in the operation of international shipping services or non-vessel-operating services:

- (1) providing service at lower freight rates than normal and reasonable ones, thereby prejudicing fair competition;
- (2) offering secret rebates to shippers, not being reflected in the book-keeping, for the purpose of soliciting cargoes;
- (3) arbitrarily taking advantage of its dominant position to impose discriminatory freight rates or other restrictive terms detrimental to the other party of the transaction; or

(4) committing any other acts detrimental to the other party of the transaction or the order of international shipping market.

Article 28

A foreign operator of international shipping services who is engaged in international shipping operations as referred to in this Chapter shall abide by the provisions of these Regulations.

Foreign operators of international shipping services shall not be engaged in the shipping service between ports of the People's Republic of China, nor operate between ports of the People's Republic of China under disguise by using chartered ships flying Chinese flags or cargo spaces thereof, or, by way of slot sharing of cargo spaces thereof.

Article 29

An international shipping agent may, upon the commission of any shipowner, charterer or ship operator, be engaged in the following businesses:

- (1) undergoing formalities for ship's entry into or departure from ports, arranging pilotage, berthing and loading and unloading of vessels;
- (2) signing bills of lading or carriage contracts and accepting freight space booking on behalf of the carrier;
- (3) undergoing customs formalities for vessels, containers and shipments;
- (4) canvassing cargoes, arranging shipments and attending to procedures for shipments and transshipment of cargoes and containers;
- (5) collecting freight and settling payment on behalf of the principal;
- (6) arranging passenger transport and attending to procedures for transport of passengers by sea; and
- (7) other pertinent businesses.

An international shipping agent shall, in accordance with the relevant provisions of the State, withhold or collect tax payable by the foreign operator of international shipping services under his agency.

Article 30

An international ship management operator may, upon the commission of any shipowner, charterer

or ship operator, be engaged in the following businesses:

- (1) sale and purchase of vessels, chartering of vessels and management of other assets relating to vessels;
- (2) ship engineering, handling of navigational affairs and arrangement of ship repair and maintenance;
- (3) recruitment, training and manning of seafarers; and
- (4) other services purporting to maintain the technical standards of the vessels and ensure their proper navigation.

Chapter IV Special Provisions on Investment in and Operation of International Maritime Transportation and Auxiliary Businesses Relating Thereto by Foreign Business People

Article 31

The provisions of this Chapter are applicable to investment in and operation of international maritime transportation businesses and auxiliary businesses relating to international maritime transportation within Chinese territory by foreign business people, and, in the absence of any provisions in this Chapter relating thereto, the relevant provisions in other chapters of these Regulations shall apply.

Article 32

Upon the approval of the competent communications department of the State Council, foreign business people may, in accordance with the relevant laws, administrative regulations and other pertinent provisions of the State, make investment to establish Chinese-foreign equity joint ventures or contractual joint ventures to be engaged in international shipping services, international shipping agency services, international ship management services, international maritime cargo warehousing, and international maritime container freight station and container yard services, and may establish wholly foreign capital enterprises to be engaged in international maritime cargo warehousing services.

The proportion of the investment made by foreign business people into Chinese-foreign equity joint ventures engaged in international shipping services or international shipping agency services shall not exceed 49%.

The provisions in the preceding paragraph are mutatis mutandis applicable to the proportion of the investment made by foreign business people into Chinese-foreign contractual joint ventures engaged in international shipping services or international shipping agency services.

The chairperson of the board of directors and the general manager of a Chinese-foreign equity joint venture or Chinese-foreign contractual joint venture engaged in international shipping services shall be appointed by the Chinese side through consultation between the two sides.

Article 33

Upon the approval of the competent communications department of the State Council, foreign business people may, in accordance with the relevant laws, administrative regulations and other pertinent provisions of the State, make investment to establish Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures or wholly foreign capital enterprises to offer such routine services as canvassing of cargoes, issuance of bills of lading, settlement of freight and signing of service contracts for their owned or operated vessels; if they have not established any Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or wholly foreign capital enterprise within Chinese territory, they must commission a Chinese international shipping agent to undertake the above-mentioned businesses.

Article 34

Upon the approval of the competent communications department of the State Council, foreign operators of international shipping services and foreign enterprises engaged in auxiliary businesses relating to international maritime transportation may establish representative offices within Chinese territory according to law.

The representative offices established by foreign operators of international shipping services and foreign enterprises engaged in auxiliary businesses relating to international maritime transportation shall not be engaged in profit-making business activities.

Chapter V Investigations and Settlement

Article 35

The competent communications department of the State Council may, upon the request of the interested parties or at its own discretion, conduct investigations into the following cases:

- (1) liner conference agreements, operational agreements or freight rate agreements concluded among international shipping operators engaged in international liner services in which Chinese ports are involved and which can be detrimental to fair competition;
- (2) service activities of the consortium set up by international shipping operators engaged in international liner services through agreements that involve a shipping volume exceeding 30% of the aggregate shipping volume for one consecutive year on one particular shipping line to and from Chinese ports and which can be detrimental to fair competition;
- (3) any act as specified in Article 27 of these Regulations; and

(4) any other act detrimental to fair competition in international shipping market.

Article 36

The investigations by the competent communications department of the State Council shall be conducted jointly with the administrative department for commerce and industry of the State Council and the pricing department of the State Council (hereinafter referred to as the investigatory organ).

Article 37

The investigatory organ shall, for conducting investigations, set up an investigation group composed of at least three members. The investigation group may, where necessary, invite the experts concerned to take part in the investigations.

The investigation group shall, prior to investigations, notify the person under investigation of the purpose, reason and time limit for the investigations. The time limit for the investigations shall not exceed one year, but can be extended for half a year where necessary and upon the approval of the investigatory organ.

Article 38

In conducting investigations, the investigators may inquire the person under investigation and enterprises or individuals having business relationships with him, and may consult and make copies of the relevant documents, agreements, contracts, account books, business faxes, electronic data and other pertinent data.

In conducting investigations, the investigators shall keep business secrets for the person under investigation and the enterprises or individuals having business relations with him.

Article 39

Persons under investigation shall accept investigations and truthfully provide relevant information and materials, and shall not refuse investigations or conceal truthful information or give false information.

Article 40

The investigatory organ shall, upon completion of the investigations, make a conclusion and notify the person under investigation and the interested parties thereof in writing.

Where any damage may be caused to fair competition, the investigator organ may take certain prohibitive or restrictive measures such as ordering to amend relevant agreements, limiting the frequency of liner services, suspending freight rates, or stopping for the time being the filing of freight rates, or ordering to regularly submit relevant materials.

Article 41

The investigatory organ shall, prior to making decisions for taking prohibitive or restrictive measures, inform the party concerned of his right to a hearing and hold a hearing when the party concerned so requires.

Chapter VI Legal Liability

Article 42

Those who are engaged in international shipping services without acquiring the Permit for International Shipping Service Operation shall be ordered to terminate the operation by the competent communications department of the State Council or its authorized communications department of local people's government; the illegal income, if any, shall be confiscated; if the illegal income is not less than 500,000 yuan, a fine of not less than two times but not more than five times the illegal income shall be imposed; if there is no any illegal income or the illegal income is less than 500,000 yuan, a fine of not less than 200,000 yuan but not more than 1,000,000 yuan shall be imposed.

Article 43

Those who are engaged in non-vessel-operating services without registering their bills of lading or paying the required surety bond shall be ordered to terminate the operation by the competent communications department of the State Council or its authorized communications department of local people's government; the illegal income, if any, shall be confiscated; if the illegal income is not less than 100,000 yuan, a fine of not less than two times but not more than five times the illegal income shall be imposed; if there is no any illegal income or the illegal income is less than 100,000 yuan, a fine of not less than 50,000 yuan but not more than 200,000 yuan shall be imposed.

Article 44

Those who are engage in international shipping agency services or international ship management services without undergoing registration formalities shall be ordered to terminate the operation by the competent communications department of the State Council or its authorized communications department of local people's government; the illegal income, if any, shall be confiscated; if the illegal income is not less than 50,000 yuan, a fine of not less than two times but not more than five times the illegal income shall be imposed; if there is no illegal income or the illegal income is less than 50,000 yuan, a fine of not less than 20,000 yuan but not more than 100,000 yuan shall be imposed.

Article 45

Foreign operators of international shipping services trading between ports of the People's Republic of China, or operating between ports of the People's Republic of China by using chartered ships

flying Chinese flag or freight spaces thereof, or by way of slot exchange of freight spaces, shall be ordered to terminate the operation by the competent communications department of the State Council or its authorized communications department of local people's government; the illegal income, if any, shall be confiscated; if the illegal income is not less than 500,000 yuan, a fine of not less than two times but not more than five times the illegal income shall be imposed; if there is no illegal income or the illegal income is less than 500,000 yuan, a fine of not less than 200,000 yuan but not more than 1,000,000 yuan shall be imposed. If the order for termination of operation is not complied with, the vessels in question shall be prohibited from entering Chinese ports; if the circumstances are serious, the offenders' qualifications for operation of international liner services shall be revoked.

Article 46

Those who are engaged in international liner services without acquiring the qualifications therefor shall be ordered to terminate the operation by the competent communications department of the State Council or its authorized communications department of local people's government; the illegal income, if any, shall be confiscated; if the illegal income is not less than 500,000 yuan, a fine of not less than two times but not more than five times the illegal income shall be imposed; if there is no illegal income or the illegal income is less than 500,000 yuan, a fine of not less than 200,000 yuan but not more than 1,000,000 yuan shall be imposed. If the order for termination of operation is not complied with, the vessels in question shall be prohibited from entering Chinese ports.

Article 47

International shipping operators, non-vessel-operating common carriers, international shipping agents or international ship management operators who provide others for using with their legally obtained qualifications for such services shall be ordered to make corrections within a specified time limit by the competent communications department of the State Council or its authorized communications department of local people's government; if no corrections are made within the specified time limit, their qualifications for operation shall be revoked.

Article 48 Those who fail to undergo the formalities for filing, as provided for in these Regulations, shall be ordered to make up the formalities within a specified time limit by the competent communications department of the State Council or its authorized communications department of local people's government; if they fail to make up the formalities within the specified time limit, a fine of not less than 10,000 yuan but not more than 50,000 yuan shall be imposed, and their corresponding qualifications may also be revoked.

Article 49

Those who fail to undergo the formalities for submitting the freight rates for the filing, as provided for in these Regulations, or fail to implement the freight rates which have been submitted for the filing shall be ordered to make corrections with the time limit by the competent communications

department of the State Council or its authorized communications department of local people's government, and a fine of not less than 20,000 yuan but not more than 100,000 yuan shall be imposed concurrently.

Article 50

Where, based on the conclusion of investigation, an administrative penalty shall be imposed, or where any of the illegal acts listed in Article 27 of these Regulations has been committed, the competent communications department, the competent pricing department and the administrative department for industry and commerce shall impose a penalty in accordance with the provisions of relevant laws and administrative regulations.

Article 51

International shipping operators who conclude negotiable freight rate agreements with non-vessel-operating common carriers failing to register their bills of lading and pay surety bond shall be given a warning and fined not less than 20,000 yuan but not more than 100,000 yuan by the competent communications department of the State Council or its authorized communications department of local people's government.

Article 52

Foreign operators of international shipping services and foreign enterprises engaged in auxiliary businesses relating to international maritime transportation, if establishing permanent representative offices without the approval of the competent communications department of the State Council, shall be ordered to make corrections within a specified time limit and fined not less than 20,000 yuan but not more than 100,000 yuan by the competent communications department of the State Council or its authorized communications department of local people's government.

The permanent representative offices established by foreign operators of international shipping services or foreign enterprises engaged in auxiliary businesses relating to international maritime transportation, if engaging in profit-making business operations, shall be ordered to terminate their business operations and be punished according to law by the administrative departments for commerce and industry.

Article 53

Those who refuse the investigations legally conducted by the investigator organ and its staff members, or conceal truthful information or give false information, shall be ordered to make corrections and fined not less than 20,000 yuan but not more than 100,000 yuan by the competent communications department of the State Council or its authorized communications department of local people's government.

Article 54

Those who are illegally engaged in international maritime transportation business operations to

and from ports of China and auxiliary business operations relating to international maritime transportation, thus disturbing the order of international maritime transportation market, shall be investigated for criminal responsibilities in accordance with the provisions of the Criminal Law on the crime of illegal business operations.

Article 55

Any staff members of the competent communications department of the State Council or competent communications departments of local people's governments, if breaking criminal laws by committing any acts as follows which result in grave consequences, shall be investigated for criminal responsibilities in accordance with the provisions of the Criminal Law on the crime of abusing powers, the crime of neglect of duties or other crimes; if the circumstances are not serious enough to constitute a crime, administrative sanctions shall be imposed according to law:

(1) failing to grant approval, permission, registration or filing to applicants who meet the conditions provided for in these Regulations, or granting approval, permission, registration or filing to applicants who do not meet the conditions provided for in these Regulations;

(2) failing to exercise supervision and administration as provided for in these Regulations over international shipping operators, non-vessel-operating common carriers, international shipping agents or international ship management operators who have obtained the approval, permission, registration and filing, or failing to deprive the operators no longer meeting the conditions provided for in these Regulations of their qualifications for business operations, or failing to investigate and deal with their illegal acts with the knowledge relating thereto; or

(3) failing to promptly ban the international maritime transportation business operations or auxiliary business operations relating to international maritime transportation carried out by any unit or individual without undergoing the formalities for approval, permission, registration or filing according to law, while these cases have been discovered during the course of supervision and inspection, or failing to handle such cases according to law after their being reported.

Chapter VII Supplementary Provisions

Article 56

These Provisions are mutants mustangs applicable to the investment into and operation of international shipping businesses and auxiliary businesses relating to international maritime transport in China mainland by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan region.

Article 57

No foreign operators of international shipping service, without being approved by the competent communications department of the State Council , shall be allowed to engage in the shipping

services between Chinese mainland and Hong Kong Special Administrative Region or Macao Special Administrative Region, nor engage in two-way direct sailing or shipping services via a third place between Chinese mainland and Taiwan region.

Article 58

The measures for administration of maritime transportation between Chinese mainland and Hong Kong Special Administrative Region or Macao Special Administrative Region shall be formulated in accordance with these Regulations by the competent communications department of the State Council.

The maritime transportation between Chinese mainland and Taiwan shall be governed by the relevant provisions of the State.

Article 59

Where any country or region has taken any prohibitive, restrictive or other similar measures discriminating against any international maritime transportation operator, ship or seaman of the People's Republic of China, the Government of the People's Republic of China shall, on the basis of reciprocity, take appropriate counter measures.

Article 60

Those who have been engaging in international maritime transportation business operations or auxiliary business operations relating to international maritime transportation before these Regulations take effect shall make up the formalities as provided for in these Regulations within 60 days after the effective date of these Regulations.

Article 61

These Regulations shall take effect as of January 1, 2002. The Provisions of the People's Republic of China on Administration of International Maritime Container Transport promulgated by the State Council on December 5, 1990, and revised and promulgated by the State Council on April 18, 1998 shall be repealed simultaneously.

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