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Maritime Policy in China after WTO: Legal & Economic Approach

by

CHENG Jin

A Thesis Submitted to
The Hong Kong Polytechnic University
In Fulfillment of the Requirements
For the Degree of Doctor of Philosophy

Department of Logistics
The Hong Kong Polytechnic University

September 2006

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_____ **CHENG Jin** _____ (Name of Student)

To My Dear Mother and Wife

Abstract of dissertation entitled:

Maritime Policy in China after WTO: Legal & Economic Approach

Submitted by CHENG Jin

For the degree of PhD in the Department of Logistics

At The Hong Kong Polytechnic University in September 2006

ABSTRACT

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity.

—Charles Dickens: Tale of Two Cities

Just as what Dickens wrote in the 19th century, it's both fortunate and unfortunate to for us be an academic researcher in the 21st century. We are fortunate for the advanced technology, which make the research resources easy to be accessed; for the completed research system, which set a universal rule for global researchers; for the detailed academic disciplines, which make the research more standardized. But we are also unfortunate for that everything has been said, and we have come too late, now that men have been living and thinking for seven thousand years and more.

With the globalization of the world economy, the maritime industry is becoming increasingly important. This research is motivated by the contrast between the importance of the contemporary maritime industry and the sparsity of systematic and in-depth research of legal and economic theories that underpin it. Despite the paramount importance of the

maritime industry for globalization and international trade, many fundamental legal and economic issues underpinning maritime policies remain unknown and deserve to be thoroughly investigated. From a theoretical point of view, very few attempts have thus far been made to explore the relation between national economy and the development of maritime industry.

This research is also motivated by the vital role of maritime policies in any sort of economies and the shortage of such studies in the era of globalization. Traditional research in this field is confined to the dispute between protectionism and liberalism in the formulation of maritime policy, and not sophisticated enough to reflect the complicated relation between maritime policy and the development of national maritime industry and to provide insights on the formulating process of maritime policy. In the existent research, the observation on maritime policies of a specific nation is either based on subjective assumption, or has ignored the continuous change of maritime policies. Although quantitative methods have been applied to economic and social research in modern times, it is still *in absentia* regarding legal research or cross-disciplinary research.

Taking above background into consideration, this research contributes to the existing literature in three aspects. First, the legal and economic theories underpinning the maritime industry, such as the formulating process of maritime policy, and the relationship between economic indicators and maritime policy, are not only analyzed by applying legal and economic theory – in particular the analytic jurisprudence and economic sociology, but also examined empirically by applying quantitative methodology. Most work in this aspect is original and, potentially, makes an important contribution to central government upon the

formulation of maritime policy against maritime development and governance.

Secondly, for the first time, new indicators, i.e. National Carriage Rate (NCR) and National Seafarer Employment Rate (NSER), have been introduced to examine the development of national maritime industry. Index method is then applied for the quantification of maritime policy in the context of the World Trade Organization (WTO). Through these preparations, the relation between three defined indicators, i.e. NCR, NSER and Balance of Payments (BOP) rate, and national maritime policy is established. The empirical results disclose the specific relation between each indicator and maritime policy, which provides an optimum approach to the formulation of national maritime policy. Regarding a specific nation, an optimum maritime policy refers to maritime policies that are the most appropriate to the development of national maritime industry.

Finally, this study makes a comprehensive review upon the development of China maritime industry and legal reform in shipping policies, and provides in-depth legislative suggestions for China government to optimize the future development of its maritime industry for the benefit of its wider economy and social welfare maximization.

PUBLICATIONS ARISING FROM THE THESIS

Journal Papers:

1. The Application of WTO Rules in China and the Implications for Foreign Direct Investment, *Journal of World Investment*, Vol.4, No.2, pp.343-361.
2. Maritime Policy in China after WTO: Impacts and Implications for Foreign Investment, *Journal of Maritime Law and Commerce*, Vol. 36, No.1, pp. 77-139.
3. Energy Security in Asia, *Journal of Maritime Law and Commerce*, Vol. 37, No. 4, pp. 567-587.
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5. The Determinants of Maritime Policy (submitted).

Conference Papers:

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ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BIMCO	Baltic and International Maritime Conference
CCF	Capital Construction Fund (USA)
CMI	Comité Maritime International
CRF	Construction Reserve Fund (USA)
DNMEs	Dynamic Non-Member Economies (OECD)
DOC	Department of Commerce (USA)
DOT	Department of Trade (USA)
dwt	Deadweight tonnage
EC	European Community/ European Communities
EFTA	European Free Trade Area
EU	European Union
FOC	Flag of Convenience
GATS	General Agreements on Trade in Services
GATT	General Agreements on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
grt	Gross registered tonnage
HK	Hong Kong Special Administrative Region
ICC	International Chamber of Commerce
ILO	International Labor Organization
IMF	International Monetary Fund
IMO	International Maritime Organization (successor of IMCO)
ISL	Institute of Shipping Economics and Logistics
LDCs	Less Developed Countries

MARAD	Maritime Administration (USA)
MFN	Most Favored Nation
MOC	Ministry of Communications of the PRC
MOFTEC	Ministry of Foreign Trade and Economic Cooperation, which is now replaced by the Ministry of Commerce
NAFTA	North American Free Trade Agreement
NCR	National Carriage Rate
NGMTS	Negotiating Group on Maritime Transport Services
NSER	National Seafarer Employment Rate
ODS	Operating-differential Subsidy
OECD	Organization for Economic Cooperation and Development (successor of OEEC)
OPEC	Organization of Petroleum Exporting Countries
PRC	The People's Republic of China
PSC	Port State Control
SOLAS	International Convention on Safety of Life at Sea
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCLOS	United National Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
US	The United States of America
USTR	United States Trade Representative
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

1.1 Background

On 11th July 1404, Zheng He (1371-1435 AD) departed from the east coast of China on his first voyage to the West. About 90 years later, on 3rd August 1492, Christopher Columbus departed on his first voyage to the other side of the sea. Global navigation opened a new chapter in human history. Since then, maritime transport has indeed turned our earth into the global village that we see today, and continue contributing to the development of the world economy.

Edgar Gold traces the history of maritime policy back to ancient times, and more specifically to the Phoenicians, the Greeks and the ancient City of Rhodes.¹ As long as the emergence of international maritime transportation, there appeared to have maritime rules and regulations under which international trade could operate. The modern maritime law is considered to coincide with the great expansion in shipping undertaken by Europeans in the 16th and 17th centuries. Hugo Grotious, a famous Dutch jurist, completed a manuscript entitled *De Iure Praedae Commentaris* in 1604. This manuscript was not published until much later, but its

¹ Gold, E. (1981), *Maritime Transport – The Evolution of International Marine Policy and Shipping Law*, Lexington, Mass., Lexington Books

third section was published anonymously in 1609 under the title *Mare Liberum*.² This work for the first time defines the concept of “*free seas*”, which protested that transportation in international waters should be open and free for all.

Despite the emergence of liberal views on shipping, which had tremendous influence on future thinking in maritime research, the concept of shipping as being of great national significance – and hence worthy of protection – remained strong³. Richard Hakluyt, a British geographer, recognized the deep-rooted nature of shipping – shipping being “the backbone of trade” in his famous work “*The Principal Navigations, Voyages, Traffiques and Discoveries of the English Nation*”. Hakluyt explored the great enthusiasm British navigation on a global scale, leaving no doubt that the sea and its sailors contained the key to a deeper understanding of the universe. He quotes the Bible to this effect: “... they which go down to the sea in ships, and occupy by the great waters, they see the works of the Lord and his wonders in the deep...”⁴ At the same time, maritime transport has always been regarded as more than a means of transport, and has been connected with the concepts of power and development. Sir Francis Bacon observed in the *Advancement of Learning* “The proficiencie in navigation and discoveries may plant also an expectation of the further proficiencie and augmentation of all sciences”⁵. Almost three centuries later, Emerson, the US poet and

² *Ibid*, p. 45.

³ Sletmo, G. K. (2002), ‘Introduction: Is There Room for National Shipping Policies under Globalization?’ in Grammenos, C. (ed.) *The Handbook of Maritime Economics and Business*, LLP: London/Hong Kong.

⁴ *The Bible*, 107 Psalm, 23rd and 24th verses.

⁵ Bacon, F. (1605), *The Advancement of Learning*, available at <http://www.classic-literature.co.uk/british-authors/16th-century/francis-bacon/the-advancement-of-learning/ebook-page-42.asp>, (last visited August 1, 2006).

philosopher, expressed similar thoughts: “The most advanced nations are also those who navigate the most.”⁶

Time flies, but what has never changed is the basic fact that more than 70% of the surface of the earth is covered by blue waters.⁷ Maritime matters have become ever more important to world trade and to the world economy as ships carry about 75-85% of world trade⁸ from energy and raw materials to industrial and agricultural products. Seaborne trade is continuing to expand at an annual rate of about 9%.⁹ Actually, maritime industry is one of the few genuinely global industries serving all continents, and the existence of more liberal policies than in many other industrial sectors, has made international shipping one of the leading globalized industrial sectors in terms of markets, technology, investment, capital and employment. However, despite its comparatively high degree of market openness, the sector is still characterized by a large variety of protections affecting free trade in maritime industry.

The unification of maritime regulatory framework has always been an important topic in the development of international law, from the Rhodian Sea Law to modern-day efforts and activities represented by the Comité Maritime International ("CMI"), the International Maritime Organization ("IMO"), the International Labor Organization ("ILO"), and other United Nations ("UN") organizations. Having recognized the importance of maritime

⁶ Emerson, R. W. (1870), ‘Civilization’ in *Society and Solitude*, available at <http://poemhunter.com/ralph-waldo-emerson/quotations/poet-6628/page-117/>, (last visited August 1, 2006).

⁷ United Nations Conference on Environment and Development, Press Summary of Agenda 21, at 22, available at http://www.johannesburgsummit.org/html/basic_info/a21_final_summary.doc, (last visited August 1, 2006).

⁸ UNCTAD (2005), *Review of Maritime Transport 2004*. Another estimate is that “95 per cent of all goods shipped by all modes of transportation in international trade move by water”. See Lawrence J. W. (1988), *International Trade in Ocean Shipping Services: The United States and the World*, p. 1.

⁹ *Ibid.*

services for international trade, members of the World Trade Organization ("WTO") have, for 20 years, endeavored to embody maritime industry into WTO legal framework. Dozens of meetings have been organized by the Negotiating Group on Maritime Transport Services ("NGMTS") since the Uruguay Round and 48 members (which represent 73 member states) have already made conditional commitments on maritime services.¹⁰ But about 20 years passed, little progress has been achieved on the WTO MTS negotiation, which discloses a fact that most maritime nations are unwilling to admit, i.e. although they expect to liberalize maritime policy in spirit, some of them insist on protectionism in practice.

1.2 Statement of the Problem

In the evolution of maritime policy and the globalization of maritime industry, protectionism and liberalism are regarded as a pair of antithetical concepts, and have been disputed by scholars. As a part of national superstructure, maritime policy is highly related to the national economic goals, objectives and developing strategies. Its primary purpose is normally considered to encourage and support a nation's merchant fleets so that they can compete on an equal footing with other countries. However, although many scholars proposed definitions about maritime policy in their research, a comprehensive definition is still absent for further research, and current definitions contain various defects. For example, Sturmeijer figured the maritime policy as "a nation may be said to have a maritime policy when it encourages, permits, or formulates measures to interfere with or control the free play

¹⁰ WTO Maritime Transport Services, Background Note by the Secretariat, S/C/W/62, 16 November 1998 and S/CSS/W/106, 4 October 2001. This information can also be found in the Ministry of Trade and Industry Norway, Developments at the WTO Negotiations on Maritime Transport Services, OECD Workshop on Maritime Transport, 4-5 November 2004.

of market forces in regard to the employment of shipping,”¹¹ which observed maritime industry from public level partially. Another example is the definition given by Chrzanowski, which stated that "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 market."¹² Despite the duality mentioned in this definition, it neglects the characteristics and functions of maritime policy. A clear and comprehensive definition of such elementary concept like maritime policy is the foundation for any academic research.

However, many questions remain in the research of maritime policy. For example, what is the process for formulation of maritime policy, what is the relation between maritime policy and national economy, whether the protectionism and liberalism are an either-or problem for a specific nation, how to define protectionism or liberalism, and how to measure the developing status of national maritime industry and policy? Before solving these problems, it is hard for a nation to formulate an optimum maritime policy. In this research, the optimum maritime policy refers to maritime policies that are the most appropriate for the accomplishment of developing objectives for national maritime industry, in other words, maritime policies that are the most appropriate for the development of national maritime industry. Although the maritime policy is very significant for the development of maritime industry, the economic indicators that affect the formulation of maritime policy are remained ambiguous and deserve to be thoroughly investigated. From the theoretical point of view,

¹¹ Sturmey, S. G. (1975), *Shipping Economics - Collected Papers*, London: The Macmillan Press, p. 178.

¹² Chrzanowski, I. (1985), *An Introduction to Shipping Economics*, Fairplay Publications, p. 112.

very few attempts have been made to apply legal and economic research methods to the maritime research.

On the other hand, there is a dearth of studies on the development of the maritime industry in China. Not only is the subject important in its own right but, more importantly, it provides an ideal laboratory to justify the impacts of liberalizing maritime policy on the development of maritime industry, because the past 30 years after China's economic reform have witnessed the gradual liberalization in its maritime industry.

1.3 Theory and Model

In this research, maritime policy is defined as:

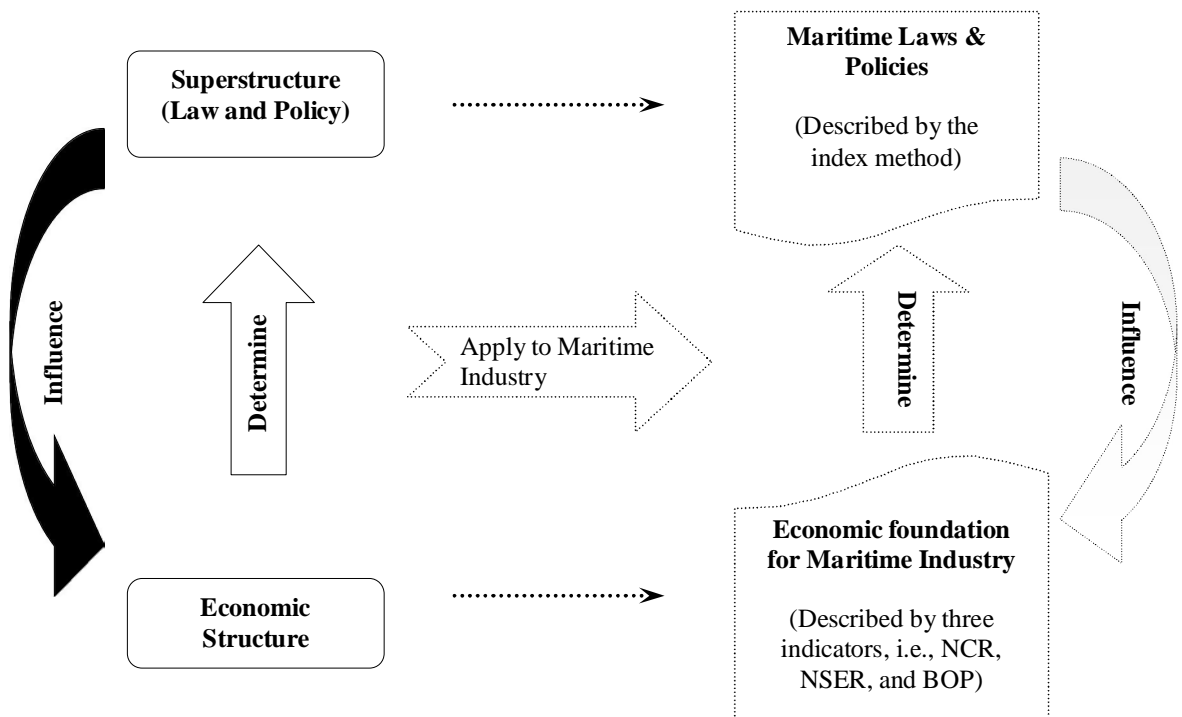
a series of economic, legal and administrative regulations, for the sake of national security and developing objectives, to ensure the development of its national fleets and operation of its maritime industry, by means of government interference and financial support.

Karl Marx observed that 'the totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness'¹³. In the maritime field, the superstructure refers national maritime laws and policies, which in this research is described by the index method, and economic structure refers to economic foundation of the maritime industry, which are described by three indicators. Then the

¹³ Marx, K. and Engels, F. (1975), 'A Contribution to the Critique of Political Economy' in *Collected Work* Vol. 29, London: Lawrence & Wishart, pp. 263-64.,.

relation between maritime policies and economic foundation for maritime industry shall be depicted by the Figure 1 – 1, i.e. maritime laws and policies are determined by economic structure of national maritime industry and influence the development of maritime industry.

Figure 1 - 1 Relation between Maritime Policy and Economic Foundation



With new definitions and indicators, this research applies the index method, a classic sociological method, to quantify maritime policy. Through the establishment of indices, a nation's maritime policy can be quantified. New indicators are introduced to establish the relation between the capacity of national merchant fleets and its oceanborne cargo volumes, as well as the employment of maritime industry against its merchant fleets. Then the relation between national maritime policy and its economic indicators shall be illustrated as:

$$\text{MAR. POL}'Y_{it} = \alpha_0 + \alpha_1 \text{NCR}_{it} + \alpha_2 \text{NSER}_{it} + \alpha_3 \text{BOP}_{it} +$$

Regardless of liberalism or protectionism, what a specific nation concerns is which kind of maritime policy is the most appropriate for the development of its national maritime industry. Such approach shall be named as *optimum maritime policy*, which is a comprised approach for the formulation of maritime policy, with the aim at the facilitation to the developing objectives of national maritime industry.

1.4 Objectives of the Research

The main objective of the thesis is to explore the legal and economic theories underpinning the maritime policy and the relationship with development of maritime industry based on which an optimum maritime policy can be identified for a particular nation. To this end, it sets out to apply traditional legal and economic theories, especially theories of political economics, economic sociology, and legal economics, to probe the relation between the national economy and its maritime policy.

According to the objective, four hypotheses have then been proposed for this thesis:

1. National economy has a relation with the formulation of maritime policy;
2. Measurable liberalization benefits the development of national maritime industry; however, excessive liberalization may handicap the further growth of maritime industry.
3. Liberalism and protectionism are not an either-or choice for maritime policy making, and an optimum approach shall be existed;

4. The current maritime policy implemented in China is no longer propitious to the development of its maritime industry.

1.5 Limitations of the Research

Before applying the quantitative measure, researchers must confirm the objectives of the research and insure the measure shall satisfy the objectives. Then, the following defects of the data and methodology must be taken into consideration.

1.5.1 Data and Resources

As has been recognized by every researcher in this field, the lack of data is a serious constraint on our capability to measure barriers to services trade. A more elaborate model can usually produce more informative results, but at the same time it requires more data and other resources, e.g. human and computing resources. On the other hand, the empirical study requires a large quantity of data upon national maritime industry. Due to the lack of a universal statistical standard on such data, this research collects these data from various original sources, e.g. statistical yearbook of a specific nation's maritime industry, yearbook of international organizations on maritime industry, data from statistical authorities of specific nations, which attempt to avoid such insufficiency to the greatest extension. At the same time, if more recognition and efforts were devoted by maritime nations, a time series empirical study would be worth doing.

1.5.2 Accuracy and Reliability

Regarding the index method, the primary problem is similar to other quantitative measures of economic policies, namely accuracy. The policy research is traditionally attribute to social science and hardly quantified. The quantitative measure for economic policy just emerged in 1995 and was largely based on subjective scoring system. Such system is usually challenged from the aspect of accuracy and reliability due to its randomness.

To minimize the impact of subjectivity and increase the reliability, the quantitative measure ought to be applied in a specific situation with special characteristics. First, the application area of this measure must be a specific industry, e.g., telecommunications, shipping services and etc, which provides a common ground for analyzing. Secondly, the industry is universally regulated, which means that the industry has a relatively uniform policy system. This makes nations' industrial policies rich of similarities and the scoring system construct on a fair basis. Finally, the industry shall be analyzed limited to a specific context, for example, an international organization. As under the umbrella of an international agreement, the scoring system would be more pertinent and ascertainable. In this research, the index method is applied to the maritime industry and within the context of the WTO maritime transport service negotiation. The maritime nations selected by this research are WTO members, and they shall comply with general principles of the WTO. All these limitative conditions reduce the inborn defects of the index method.

1.6 Structure of the Thesis

The organization of this thesis can be summarized by Figure 1-1. Chapter 2 focuses on literature review of relevant theories and give thorough definitions on important concepts, e.g. maritime policy. Historical review on the maritime transport service negotiation of the WTO and a comprehensive introduction for the index method are processed. Chapter 2 provides theoretical guidelines for the discussions of the rest of this thesis.

Chapter 3 critically reviews relevant theories of political economics, sociological economics and legal economics, and clarifies the relation between the defined economic indicators and maritime policy. Indicators that reflect the formulation of national maritime policy are defined and empirical study upon the relation between these indicators and maritime policy is processed. This part contributes the most important theoretical framework and provides the methodological basis for a further analysis of the thesis.

Chapter 4 discusses common tools for protection in maritime industry and discloses the actual resistance of the WTO MTS negotiation. Alternative solutions to the WTO negotiation are put forward in the same Chapter. All of this work is necessary for the verification of the empirical study and paves the way for further analysis on China case in Chapter 5-7.

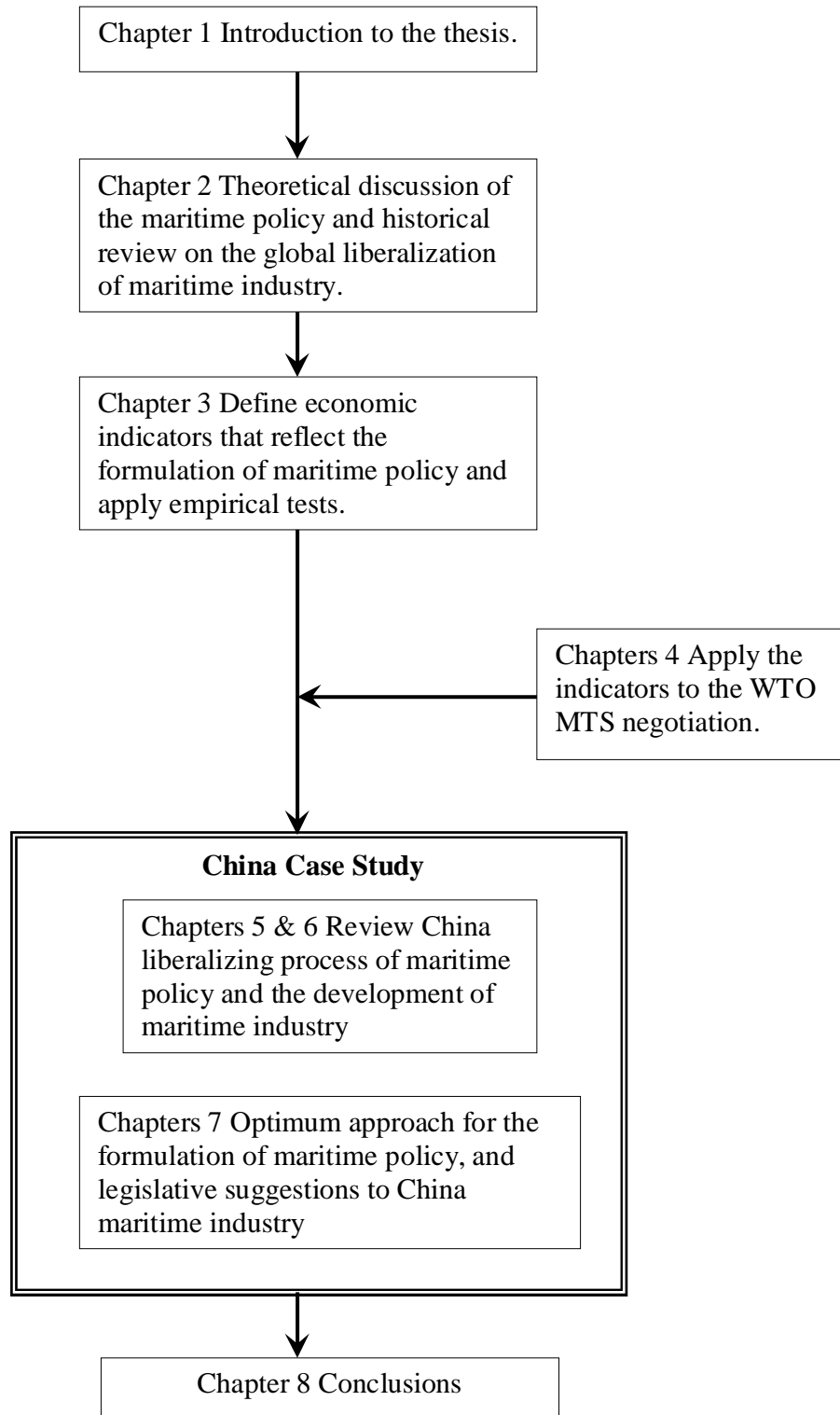
Chapter 5 is the comprehensive review on the policy liberalization of China after its economic reform. Chapter 6 examines the development of China maritime industry in the past more than twenty years, and applies the economic indicators to China case to justify whether its maritime policy is propitious to the development of maritime industry. The

robustness of empirical results proves that China maritime policy goes beyond the appropriate roof of liberalization, regarding its developing objectives of maritime industry.

Chapter 7 expatiates on the compromised approach upon the formulation of maritime policy, i.e. optimum maritime policy, and provides legislative suggestions for China maritime policy to accomplish its developing objectives.

Finally, Chapter 8 summarizes the whole research, points out the further directions for research and concludes the thesis.

Figure 1 - 2: Organization of the Thesis



CHAPTER 2

THEORETICAL AND METHODOLOGICAL REVIEW

This Chapter serves as the literature review of the thesis. The review is divided into three parts. It first defines the intension and extension of maritime policy and sets out the definition framework for the thesis. Then the historical process of the WTO MTS negotiation is comprehensively reviewed which conduces to the understanding of the development of the WTO maritime negotiation. Last part is on the main methodology, i.e. index method, and data collection.

2.1 Introduction

The theories of the maritime policy are both significant and difficult. On the one hand, it is the requisite for the developing of maritime industry or the progress of international liberalization. On the other hand, it is not an easy task because of the complexity of the maritime policy itself. The complexity is not only due to various formulating reasons of maritime policy, but the ever changing of the industry itself. This chapter sets out to investigate the theoretical development of maritime policy and negotiating progress of the maritime globalization.

Sector 2.2 synthesizes the definition of maritime policy, which clarifies the research object of the thesis. Subject to the definition, this sector outlines the theoretical system of

two predominant trends in the theory of maritime policy, i.e. liberalism and protectionism, and defines the controversy between these two kinds of maritime theory. Sector 2.3 elaborates the progress of the WTO maritime transport services negotiation, as well as its members' responses, which pave the way for further discussion on alternative solution to WTO MTS negotiation in Chapter 4. Final part of this Chapter explains the functions and advantages of the *Index Method*, and enumerates the primary resources and data of this thesis.

2.2 Comparative Review on Maritime Theory

2.2.1 Evolutional Review on the Definition of “Maritime Policy”

As a part of national policy structure, maritime policy is highly related to the nation's economic goals, objectives and developing strategies. Its primary purpose is normally regarded as to encourage and support a nation's merchant fleets so that they can compete on an equal footing with other nations. Therefore a nation's maritime policy determines the development of its maritime industry and requires a comprehensive definition for further research. In the past century, many scholars proposed their arguments of maritime policy and paved the way for a more general definition.

In 1957 Florence proposed a classic defining method for industrial policy, which defined policy formulation as a syllogism, involving three steps:

- (a) Definition of some ethical purpose deemed desirable (e.g. shipping is in the national interest)

- (b) Scientific statement providing test of above (e.g. cause and effect analysis showing ‘value’ of shipping); and
- (c) Adoption of rules or legislation to achieve stated purpose (e.g. allowing public financing of shipping, protectionist measures, etc.).¹

When applying this method to maritime industry, it reflected its limitation in a global environment, for the gradual deregulation trend and liberalism in maritime filed.

In Sturmeý’s research structure of maritime industry, he provided a definition of maritime policy, which states that:

“a nation may be said to have a maritime policy when it encourages, permits, or formulates measures to interfere with or control the free play of market forces in regard to the employment of shipping. The interference or control may extend from ad hoc measures to a carefully planned and continuous policy.”²

This definition emphasized the governmental interference in maritime industry *ex parte*, i.e. the third step of Florence’s policy development concept. This character was decided by the general point of his work, which formulated the maritime protectionism and affirms the support from the government.

Through observing the United States maritime policy, Jantscher identified three key areas of intervention by the US government in the maritime industry, (with involved agencies indicated in parentheses):

¹ Florence, P. S. (1957), *Industry and the State*, London: Hutchinson & Co., p. 11.

² Sturmeý, S. G (1975), *Shipping Economics - Collected Papers*, London: The Macmillan Press, p. 178.

- (a) Service providing navigational aids, dredging ports and channels, etc. (Coast Guard and others);
- (b) Regulation: safety, work conditions, rates (Coast Guard, Federal Maritime Commission); and
- (c) Promotion of national maritime industries (Maritime Administration).³

Jantscher's multifaceted definition of maritime policy is valuable for defining the aspects in which governments still played an important role, including the auxiliary services, security and financial sectors, nevertheless this definition identified public power in maritime industry *ex parte* and neglected the private side.

Chrzanowski defines maritime policy 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 market."⁴ This is a standard definition from the aspect of policy and also reflects the duality, i.e. nationality and internationality, of the maritime policy.

In the maritime theory, the attributes of maritime policy have two kinds of classification. It is normally considered to have two different and interdependent aspects: domestic, which is the attitude of the State towards its own merchant marine, and foreign which is its attitude towards the fleet of other countries.⁵ In other words, from the national aspect,

³ Jantscher, G. R. (1975), *Bread Upon the Waters – Federal Aids to the Maritime Industries*, Washington D. C.: The Brookings Institution, p. 1.

⁴ Chrzanowski, I. (1985), *An Introduction to Shipping Economics*, Fairplay Publications, p. 112.

⁵ *Ibid.*

maritime policy deals with the rights and obligations of States, which determines the developing trend of its maritime industry; meanwhile from the international side, it directly affects commercial operations and practices.⁶

Roe introduced the spatial theory into identify the aspects of the maritime policy and discuss this issue from five levels – international, supra-national, national, regional and local.⁷ And in detail he illustrates the following eight contexts that formulate the external framework of maritime policy:

- (a) *Economic*: the impact of economic factors upon the derivation of characteristics of maritime policy for a particular regime;
- (b) *Legal*: the legal framework within which the maritime sector has to operate;
- (c) *Managerial*: the relationship of the internal structure of maritime companies with the policy framework that is imposed;
- (d) *Organizational*: the structure and characteristics of the maritime industry as a whole rather than company internal activities and two important trends here stand out the relation to policy-making at all levels – privatization and globalization;
- (e) *Political*: the political context from which all maritime policies emerge;
- (f) *Social*: a multitude of complex relationships between the maritime industry and the society in which it operates;
- (g) *Spatial*: the fact that maritime policy is not only derived at a variety of spatial levels, i.e. five levels mentioned above, but also is affected by a variety of spatial issues; and
- (h) *Technical*: the changes in technical facilities and methods which have direct and

⁶ OECD (2002), *Regulatory Issues in International Maritime Markets*, Section II, OECD: Paris, pp. 26-42.

⁷ Roe, M. (2002), 'Maritime policy in the Globalization Era: the Inter-Relationship between International, Supra-National and National Shipping Policies', in Grammenos, C. (ed.) *The Handbook of Maritime Economics and Business*, LLP: London/Hong Kong, pp. 495-511.

indirect effects upon the maritime industry.⁸

These classifications mainly discuss from the different levels of the international law, i.e. either international and national, or international, supra-national, national, regional and local. Nevertheless, observing from the economic theory, the maritime policy also has two important characteristics – public and private. As a part of national economic structure, the predominant trait of maritime industry is its essential role at national level, for it is not only important for the development of economy, but for the national security and national defense. So comparing with other industrial policies, the maritime policy reflects less market-determined characteristic, but more political consideration. From the private side, the maritime policy has its international and national merits similar to other common industries with international traits, e.g. import, export, investment and etc. However at the public side, it is observably different from other economic policies, because the government shall consider not only the development of the industry, the operational environment and the order of the industry, but the military demand for the safety of the state.

In this research, maritime policy is defined as:

a series of economic, legal and administrative regulations, for the sake of national security and developing objectives, to ensure the development of its national fleets and operation of its maritime industry, by means of government interference and financial support.

⁸ *Ibid.*

These special aspects determine the contrary arguments in the research field, protectionism versus liberalism. In the trend of the globalization, economists protest the liberal policies in consensus for most industries, but the two different arguments have continually existed in maritime industry.

2.2.2 Theoretical Review of Maritime Protectionism

The controversy between the liberalism and protectionism during the formulation of maritime policy is originally accompanied with the emergence of maritime industry. Protectionism is that a nation adopts restrictive maritime policies with aim of protecting its domestic maritime industry from external competition, and providing support measures to its domestic players for the development of national fleets. The objectives of maritime protectionism policy are of a twofold nature, 1) to maintain the already established position of a country's merchant marine, and 2) to expand the own merchant fleet to the size and structure desired and determined by the needs of the national economy of that country.⁹

Sturmey systematically elaborates the aims and objectives of protective maritime policies. He identifies the following eleven items, which may cause a nation to interfere with the competitive process in world shipping.

- (a) To promote and protect a merchant marine for defense purposes, including aggression;
- (b) To establish a merchant marine capable of transporting the country's essential

⁹ *Supra* note 4 at 112.

trade in order to avoid the disruptions consequent upon wars in which the country concerned is not participating;

- (c) To satisfy national prestige;
- (d) To enable an infant merchant marine, which will eventually be able to dispense with assistance, to become established;
- (e) To foster trade and communications between the country concerned and other countries, particularly trade with colonial territories;
- (f) To save foreign exchange otherwise used in freight payments;
- (g) To provide or maintain employment for national seafarers;
- (h) To protect the merchant marine in times of severe competition;
- (i) To counter actual or suspected discriminatory practices by conferences or national trade groups;
- (j) To improve the quality of the merchant fleet and increase its competitive strength; and
- (k) To compensate national shipowners for an overvalued exchange rate maintained for other purposes, or for disadvantages imposed on shipping by the protections of industries.¹⁰

The enumerated aims fall into two categories, i.e. economic and non-economic. These two classifications are always interdependent, where the military, political, social reasons for the development of national maritime industry would have economic repercussions and vice versa. Although the initial reasons for different nations to adopt protectionism in maritime policies are different, the hypostasis of such kind of policy is similar, which is to protect its domestic shipping market and ensure the development of its national fleets. According to the theory of Lodykowski, the maritime protectionism shall be distinguished by three basic forms:

¹⁰ *Supra* note 2, at 180-81.

- (a) Direct or indirect financial assistance/subsidies by the State for private shipowners;
- (b) Other forms of active support for shipping in the form of administrative and legal measures which, while bringing definite advantages for the shipowners, do not take form of financial assistance; and
- (c) Shipping étatism.¹¹

The first category usually operates in the form of *subsidies*, the aim of which is to either develop the national maritime industry, or to maintain the achieved level of development of the national fleets. Subsidies may be applied in a long-term or only a short time when the nation's maritime industry faces financial difficulties. Regarding other forms of government support for shipping, i.e. second category, it has three common forms, which are preferential treatments, cargo reservation and control of foreign exchange.¹² The last term – shipping étatism refers to the government direct involvement in maritime industry. These three kinds of protection measures are always applied together, while sometimes a nation may choose a specific method to achieve a given aim. No matter the form of the maritime protectionism, the governments are actually involved in the operation of maritime industry, either in the centrally-planned nations, i.e. there is a state monopoly of maritime industry, or in market-oriented nations. Detailed discussion on protection measures in maritime industry is presented in the Chapter 4.

¹¹ *Supra* note 4 at 112.

¹² *Ibid.*

2.2.3 Theoretical Review on Maritime Liberalism

Maritime liberalism is originated from the basic principle of international trade, which protests that “if every country allows free trade and fully employ all resources worldwide, all nations, whether developed or developing, will benefit from the free trade.”¹³ This theory is regarded to be adaptable to service trade as well.¹⁴ In the maritime context, the liberalism consists of the free and fair competition in maritime transport, no matter which nation’s flag the fleet flies. A nation’s shipping market opens to overseas service providers on a non-discriminatory basis and its shippers have the right of free choosing of carriers.

From the public level, the liberalism requires no intervention from the public bodies/government or theirs agencies on the shipping market. Thus, any kind of maritime protectionism is opposite to the maritime liberalism.

In the view of maritime liberalists, the reasons for a nation to protect or promote its maritime industry include:

- (a) are needed to carry trade;
- (b) have some special value for the balance of payments;
- (c) are needed for defense purposes;

¹³ Comparative advantage was developed by David Ricardo, *On the Principles of Political Economy and Taxation* (1817), which in turn is built upon the work of Adam Smith *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776).

¹⁴ WTO (1999), *Trading into the Future*, Law Press Beijing, p. 37.

(d) enable the nation to exercise special influence in such bodies as the IMO.¹⁵

Goss and Marlow demonstrate the falsities of these arguments and concluded that: “There have so many errors in so many governments’ policies towards shipping, and they have generally combined such high expense with such limited effectiveness, that one must be tempted to fall into the trap of saying that the best policies are those which involve the smallest levels of governmental activity, the lowest levels of public expenditure and the least chance of serious error.”¹⁶ In fact, the maritime liberalism is more like a slogan than the reality, because some nations claim to be the advocates of maritime liberalism while adopting various kinds of protection measures. So to define a nation belonging to liberalism or protectionism is difficult to carry out.

Professor T Lodykowski distinguishes three kinds of maritime liberalism. The first type is represented by the nations which allow foreign owned ships to carry their flag, thence scarcely intervening in their administration. The second type is represented by the nations in which shipping is nearly totally in private hands and government assistance has mostly indirect character (tax allowances, credit facilities, etc). The final type is represented by the nations which practice direct assistance to shipping, mostly of financial nature, or those in which the State is directly involved in maritime activities (shipping étatsisme) but which advocate a free competition in international shipping and

¹⁵ Goss, R. and Marlow, P. (1993), ‘Internationalism, Protectionism and Interventionism in Shipping’, in Gwilliam (ed.) *Current Issues in Maritime Economics*, Kluwer Academic Publishers, pp. 45-65.

¹⁶ *Ibid.*

do not use, on a large scale, any administrative measures of cargo reservation.¹⁷ One of this thesis's objectives is to *define a nation's opening degree of its maritime policy by introducing some economic indicators, which may reveal national attitude towards maritime industry in figures.*

OECD, as an important international economic organization, has dedicated to a universal rule of maritime liberalism for more than 20 years and continuously updated its Common Shipping Principles. Nonetheless, this document is only a recommendation of Council and less of legal enforceability. The latest version was adopted by the OECD Council in September 2000 and covers the following areas:

- (a) The bases of Member countries' maritime policies
- (b) Principles to follow for Normal Resolution of Problems
- (c) Consultation among Member Countries
- (d) Response to Pressures from non-Member Countries
- (e) Availability of Countervailing Powers
- (f) Use of Countervailing Powers
- (g) Equitable Treatment in Shipping Agreements
- (h) Freedom of Shipping in Bulk Trades
- (i) Government Supervision of the Trade
- (j) The Role of Government and Competition Policy in Liner Shipping
- (k) The Relationship of Governments to the Activities of Shipping Lines and Conferences
- (l) Avoidance and Resolution of Conflict in Matters of Competition Policy Concerning Shipping
- (m) Non-Conference Shipping

¹⁷ *Supra* note 4 at 112.

- (n) Maritime Auxiliary Services
- (o) International Multimodal Transport
- (p) Measures Relating to Safety, the Environment and Substandard Shipping¹⁸

WTO, as another important international economic organization, also aims for the liberalization and unification of maritime policies. Its efforts will be detailed reviewed in the following sector. Actually, many of current advocates of liberalism were themselves in the not-too-distant past followers of protectionism in maritime transport. Only when these countries became strong nations in the maritime industry, then they would start to proclaim a policy of maritime liberalism which they needed to maintain their position and to counter the attempts by the newcomers to change the existing status quo.

2.2.4 Contradictions in Maritime Policies

National maritime policies, which are determined mainly by the nature of national merchant fleets and objectives for national maritime industry, vary greatly both in concepts and measures. Also, nations with different history, geography, economic system, political structure and developing goals, would express different attitudes towards the developing directions of maritime policies. Geographic preponderance makes maritime industry as an inborn backbone of those nations' economy and makes the fleets of these nations more competitive, hence such nations will possibly be maritime liberalism, Singapore and Hong Kong are the most convincing examples. On the other hand, nations with legendary navigation history would likely maintain the development of their

¹⁸ OECD (2000), *Common Shipping Principles*.

maritime industry for the reason of national pride, e.g. United Kingdoms and Spain. Those nations, whose fleets have a weak position in the global market but bearing lots of national security burden, need comprehensive and intensive protections of interests of their national fleets against competition from those more competitive carriers, the US is an obvious representative of this kind of nations.

The controversy between liberalism and protectionism reflects in dual levels, i.e. international and national. From the international level, the conflict exists between the traditional maritime powers and the developing countries. The developed nations wish to maintain their status quo in the world maritime industry and require the developing countries to adopt liberal policies, where the newcomers would usually provide support measures to its maritime industry. The developing countries wish to foster its national maritime industry and insure the competitiveness of its national fleets, while the traditional powers, for their own benefits, provoked a sharp criticism from the defenders of the principles of free and fair competition in maritime transport. On the other hand, some developed nations with dying maritime industry also adopted lots of protection measures to support the development of their maritime industry, but at the same time they required the openness of shipping market of other nations. This situation sometimes intensified the controversy and hampered the efforts on liberalizing world maritime industry from some international organizations.

At the national level, a nation's maritime policy is not static, but dynamic, in accordance

with the developing objectives of its maritime industry. At the infant phase, in order to ensure the survival of national fleets, nations will adopt protection measures to prevent the competition from overseas competitors and provide financial as well as political support to its own fleets. With the development of maritime industry, a nation's maritime industry may require to enter other competitors' market and then advocate maritime liberalism for the fair and free competition. During the process of transform, the controversy would possibly occur between the maritime liberalists and those "pseudo-liberal", which refer to nations who claim to be an advocate of maritime liberalism, adopt a wide range of protection measures¹⁹.

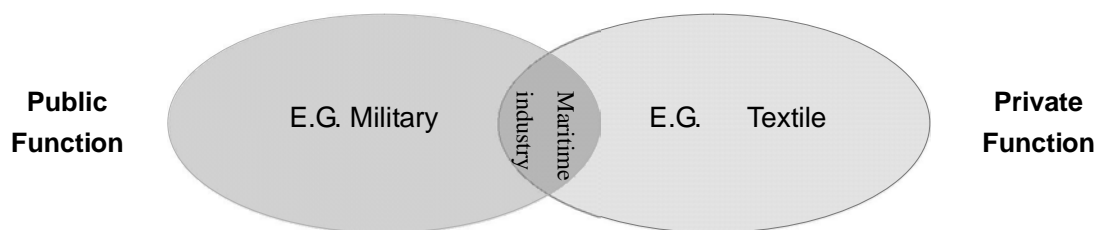
No one can tell which kind of maritime policies are really adaptable to a specific nation, due to different historical, geographical, political, economic situations. One of the objectives of this research aims to point out that *liberalism and protectionism are not the only dual selections for a nation*. From the view of a nation, it is not important to determine whether it belongs to maritime liberalism or protectionism, but which kind of maritime policy benefits its national fleets most.

Functions of a nation's policy shall be approximately examined from two levels, i.e. public level and private level. The former includes the enhancement of national security, ensuring the national defense and etc.; while the latter refers to the promotion of the development national economy, facilitation of healthy development of economic

¹⁹ *Supra* note 4.

structure and etc. Policy for military industry is a typical example that carries the public functions, and the common industrial policies, e.g. textile, generally belong to the latter category. As discussed above, the primary characteristic of the maritime policy is that it bears both of the dual-level functions, because it is responsible to the national security and safety in time of emergency, and it is also very important to the development of national economy and international trade as well. Figure 2-1 demonstrates the functional differences between maritime industry and other industries.

Figure 2 - 1 Functional Characteristic on Maritime Policy



Hence, during the formulation of a nation's maritime policy, it must make clear of the functions and objectives of its maritime industry and then formulate a set of policies that facilitate the accomplishment of its desired objectives.

2.3 A Comprehensive Review of the WTO Maritime Transport Services Negotiation

In the contemporary era, WTO is the most important international organization governing trade and services, and maritime transport sector is also under the concern of the WTO. After accessing to the WTO as its 143rd member in 2001, China has attempted to integrate WTO principles into its national legal system. Therefore, WTO provides a universal platform upon maritime policy for China and other major maritime nations, who aim to participate in the MTS negotiation, so that the evolutionary process of the WTO MTS negotiation needs to be expatiated.

In order to establish a multilateral agreement on maritime transport services that will lead to the expansion of trade in this area under “conditions of transparency and progressive liberalization are being undertaken at the international level²⁰”, the WTO has made great of efforts since its predecessor, i.e. GATT. This sector focuses on the negotiation progress of the WTO on the issues of maritime transport services in the past 20 years.

2.3.1 A Historical Review of the WTO Maritime Negotiations (1986-2005)

With the understanding that the maritime trade is not only a vital part of, but also

²⁰ Kang, J. and Findlay, C. (1998), ‘Regulatory Reforms in Maritime industry’, paper presented at *International Conference on Ocean Economy and Sustainable Development in the APEC Region*, October 28-30 1998, Xiamen China, organized by the Pacific Society of China; Xiamen Municipal Science and Technology Commission; Research School of Southeast Asian Studies, Xiamen University; and the Southeast Asian Programme in Ocean Law, Policy and Management (SEAPOL).

contributes greatly to, world trade, since the 1980s the WTO and its predecessor the General Agreement on Tariffs and Trade ("GATT") has paid a great deal of attention to maritime negotiations.²¹ The initial document of the WTO was a note by the Secretariat in July 1989 on "Trade in Transport Services"²², of which paragraphs 49 to 94 and Tables 6 to 10 were devoted to maritime transport. During the Uruguay Round, a special Working Group was set up for transport services, and in 1990, it held two meetings on maritime transport.²³

In December 1993, a new round of trade negotiations was re-opened at the Ministerial Meeting, and the NGMTS was established to carry out negotiations on maritime transport services.²⁴ The aims of the NGMTS are to "achieve commitments in international shipping, auxiliary services and access to and use of port facilities, as well as to lead to the elimination of restrictions within a fixed time scale".²⁵ The negotiations in the NGMTS shall be open to all governments and to the European Communities that announce their intention to participate.²⁶ The Decision also required the NGMTS to hold

²¹ In 1986, the participants in the GATT Ministerial declared at the urging of the United States that there should be negotiations concerning trade in services. Taylor, J. M. (2002), *Evaluating the Continuing GATS Negotiations Concerning International Maritime Transport Services*, Tulane Maritime Law Journal, 27, pp. 129-203. Maritime Transport Services are deservedly an important component of such negotiations

²² MTN.GNS/W/60, 4 July 1989.

²³ MTN.GNS/TRANS/2, 6 August 1990 and MTN.GNS/TRANS/6, 30 November 1990.

²⁴ WTO Maritime Transport Services, Background Note by the Secretariat, S/C/W/62, 16 November 1998 and S/CSS/W/106, 4 October 2001. This information can also be found in the Ministry of Trade and Industry Norway, Developments at the WTO Negotiations on Maritime Transport Services, OECD Workshop on Maritime Transport, 4-5 November 2004.

²⁵ WTO, Decision on Negotiations on Maritime Transport Services, 15 April 1994.

²⁶ *Ibid.*

its first negotiating session no later than 16 May 1994.²⁷ From May 1994 to June 1996, the NGMTS held a total of 17 meetings and concluded an important document entitled the "Draft Schedule on Maritime Transport".²⁸ Another important achievement of the NGMTS was the questionnaire on maritime transport services²⁹. At the end of 1995, the deadline set by the NGMTS for participants in the negotiations to submit a written response, a total of 37 members had responded to the questionnaire, representing 46.6 per cent of the tonnage of the world's fleets in terms of registration and more 80 per cent in terms of ownership.³⁰ The feedback of the members to this questionnaire became a very good source of data for research on their maritime policies, and was also a basic source of data for this study.

In June 1996, in order to further liberalize international trade in maritime transport services within the framework of the General Agreement on Trade in Services ("GATS"), the Council for Trade in Services adopted the "Decision on Maritime Transport Services".³¹ The decision was to "suspend the negotiations on Maritime Transport Services and to resume them with the commencement of the comprehensive negotiations on Services, in accordance with Article XIX of the GATS, and to conclude them no later than at the end of this first round of progressive liberalization".³¹

²⁷ *Ibid.*

²⁸ Job N 1872, 15 April 1996.

²⁹ S/NGMTS/W/2, 21 October 1994.

³⁰ WTO Secretariat, Maritime Transport Services, S/C/W/62, 16 November 1998.

³¹ Decision on Maritime Transport Services, S/L/24, 3 July 1996.

In January 2000, the members of the WTO commenced a new round of negotiations on trade in agriculture and services (including maritime) on the basis of an earlier GATS mandate that committed member governments to undertake those negotiations no later than 2000.³² During a Special Session of the Council on Services³³ held from 28 to 30 March 2001, negotiating guidelines and procedures were adopted for all of the sectors. These guidelines and procedures recognize that “liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations. The main method of negotiation shall be the request-offer approach”.³⁴

In October 2000, the European Communities³⁵, Hong Kong, Japan, the Republic of Korea (South), Norway, and Singapore called upon the other members of the WTO “to express their views” on the negotiations on maritime transport services.³⁶ Following this call, communications on the negotiations have been processed among the European

³² Organization for Economic Co-operation and Development, *Preparations for WTO*, available at http://www.oecd.org/document/13/0,2340,en_2649_34367_2086989_1_1_1_1,00.html (last visited August 1, 2006).

³³ Press Release, WTO, *WTO Services Talks Press Ahead*, Press/217 (2 April 2001), available at http://www.wto.org/english/news_e/pres01_e/pr217_e.htm (last visited August 1, 2006).

³⁴ WTO, *Guidelines and Procedures for the Negotiations on Trade in Services*, available at http://www.wto.org/english/news_e/pres01_e/pr217_e.htm (last visited August 1, 2006). The section on “Objectives and Principles” recognizes that “the negotiations shall be conducted on the basis of progressive liberalization as a means of promoting the economic growth of all trading partners and the development of developing nations, and recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services.”

³⁵ The European Union (“EU”) is called the European Communities (“EC”) in WTO documents. In this research, the EC only refers to the original 15 member states, i.e., Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, the Netherlands, and the United Kingdom.

³⁶ Joint Statement from the European Communities and Their Member States; Hong Kong, China; Japan; Republic of Korea; Norway and Singapore: *The Negotiations on Maritime Transport Services*, S/CSS/W/8, p. 5, October 6, 2000.

Communities and their member states³⁷, the Republic of Korea³⁸, Australia³⁹, Columbia⁴⁰, and Japan⁴¹. Compared with the expectations in the early stages of a new round of negotiations, these proposals are limited to a general recognition of the need for a broader discussion on issues relating to multimodal transport⁴² and to opening the door for exploring new scheduling approaches to processing the negotiations⁴³.

In November 2001, the Ministerial Declaration, which was launched during the 4th Ministerial Conference (Doha Round), mentioned that “participant shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003”.⁴⁴ In an effort to avoid a repetition of the unsuccessful negotiations undertaken as part of the Uruguay Round, the Maritime Transport Committee has, over the past five years, laid the basis for a more pragmatic, maritime-oriented approach by widely

³⁷ Communication from the European Communities and their Member States – GATS 2000: Transport Services, S/CSS/W/41, December 22, 2000.

³⁸ Communication from the Republic of Korea – Negotiating Proposal for Maritime Transport Services, S/CSS/W/87, May 11 2001.

³⁹ Communication from Australia – Negotiating Proposal for Maritime Transport Services, S/CSS/W/111, October 1 2001.

⁴⁰ Communication from Columbia – Maritime Transport Services, S/CSS/W/123, November 27, 2001.

⁴¹ Proposal by Japan on the Negotiations on Trade in Services, *available at* <http://www.mofa.go.jp/policy/economy/wto/propos0012.html> (last visited August 1, 2006).

⁴² *Supra note* 39 at 5 (“Multimodal transport related to the maritime sector should be added to the negotiations as the fourth pillar.”); *Supra note* 38 at 8 (“The negotiations should be comprehensive in scope, and include maritime intermodal transport services... .”); *Supra note* 37 at 7 (“Where possible, commitments should be offered and sought so as to facilitate multimodal transport operations (through broad-based commitments on auxiliary services to transport and commitments ensuring access to competitive services provided in other transport areas).”); *Supra note* 41 at 58 (“Intermodal transport should be appropriately considered as well.”).

⁴³ *Supra note* 39 at 7. “The model could be supplemented by other appropriate negotiating methodologies. Options available could include a cluster approach to the MTS subsector which would involve a group of the most economically important services related to maritime transport.”

⁴⁴ *Ministerial Declaration*, WT/MIN (01)/DEC/1, 20 November 2001, para. 15.

promoting further liberalization in maritime transport services.⁴⁵ The Doha Declaration also endorses the work already done, reaffirms the negotiating guidelines and procedures, and states that “the negotiations to be pursued under the terms of this Declaration shall be conducted not later than 1 January 2005”.⁴⁶ However, by January 2005, only a few dozen member nations and regions were abiding by it.

During the 1994-1996 negotiating meetings, the chief discrepancy displayed was between the USA and the rest of the negotiating members. The USA stated that "it would not put forward either an offer or a request because it did not consider the existing offers satisfactory".⁴⁷ Australia, Brazil, Canada, Chile, Colombia, the EC, Hong Kong, Japan, New Zealand, Norway, Singapore, and Switzerland expressed deep disappointment with the US statement⁴⁸ and urged the USA to participate in a more meaningful way⁴⁹. Many of these delegations found the US position unacceptable and reiterated their resolve to put together a substantial package of conditional offers in order to persuade the USA to participate.⁵⁰ But in the successive meeting, the US representative publicly stated that "the package submitted by 24 participants was inadequate" and "the USA was reluctant to accept MFN-based obligations".⁵¹ Hence the negotiations on maritime transport

⁴⁵ *Supra* note 32.

⁴⁶ *Supra* note 45.

⁴⁷ NGMTS, Note on the Meeting of 13 and 16 February 1996, S/NGMTS/9, 8 March 1996.

⁴⁸ NGMTS, Note on the Meeting of 24 May 1996, S/NGMTS/12, 3 June 1996.

⁴⁹ *Supra* note 47.

⁵⁰ *Supra* note 48. Brazil and Singapore, the latter on behalf of the ASEAN nations, felt that it was ironic that the USA, who had insisted on negotiating services in the Uruguay Round, had now prevented a fully multilateral outcome from being achieved in three successive negotiations. Chile even thought that "the position the USA had taken compromised the ability of the WTO to deal with an ambitious trade agenda."

⁵¹ NGMTS, Note on Meeting of 17 June 1996, S/NGMTS/14, 24 June 1996.

services stagnated. In considering how the process might be revived, a logical and fundamental question arises here – could the WTO maritime negotiations go ahead and agreement be reached among a majority of the members without the participation of the USA? Before systematically addressing this issue, the scope of the negotiations and the commitments of the members have to be reviewed and analyzed.

2.3.2 A Horizontal Review (Scope) of the WTO Maritime Transport Negotiations

The WTO defines the framework for the negotiations on maritime transport services using the *Services Sectoral Classification List*⁵². Section 11 specifies that negotiations over transport services shall include the following: 1) maritime transport services (passenger, freight, rental of vessels with crew, maintenance and repair of vessels, pushing and towing and supporting services); 2) internal waterways transport (the scope is the same as that regulated under maritime transport services); 3) air transport services, space transport, rail transport services, road transport services, pipeline transport, services auxiliary to all modes of transport (cargo handling services, storage and warehouse services, freight transport agency services and other), as well as 4) other transport services.

For the section on maritime transport services, in Marrakesh in 1995 the ministers agreed on the three-pillar model, which consists of: 1) maritime transport services, 2) maritime

⁵² *Services Sectoral Classification List*, MTN.GNS/H/120, 10 July 1991, Sec. 11.

auxiliary services, and 3) port services.⁵³

The first pillar is “maritime transport services”, which comprises both passenger transport and freight transport between ports in different nations (this is the so-called international transport or blue water services). Due to the high level of protection, cabotage⁵⁴ has not been included in the planned negotiations. The main maritime nations, which practice cabotage protection, only allow national flag ships to engage in domestic waterborne transportation. Evident from the practices of main maritime nations, this sector is the most open of all the three sectors, although there is still room for further liberalization.

The second pillar is “auxiliary services”, which includes cargo handling, storage and warehousing, stevedoring, freight forwarding, customs clearance, container-station, and depot services. The rights of foreign operators to establish their own facilities and supply these services will also be dealt with. In respect of restrictions on market access, most maritime nations protested that they would be unbound in the cross border supply of services because it was not technically feasible to do so, thus the restrictions in this pillar were very prominent in almost all the member states.

The third pillar, “port services”, covers all services provided to ships while accessing and

⁵³ NGMTS, Note on the Meeting of 5 and 8 Dec. 1995, S/NGMTS/8, 5 January 1996.

⁵⁴ Cabotage refers to “the carrying on of trade along a country’s coast; the transport of goods or passengers from one port or place to another in the same country.” Garner, B. A. (ed. 1999), *Black’s Law Dictionary* 7th edition, West Group St. Paul, Minn., p. 194.

berthing in ports, such as pilotage, towing and tug assistance, provisioning, garbage collection, port captain's services, and anchorage, especially on the foreign ships that have gained these rights without discrimination. In most maritime nations, maritime transport operators are not bound for the presence of natural persons to supply services in this pillar although some of them impose various restrictions of this mode of supply. Many nations also require licenses or concession to be obtained in case of the use of public domain for the supply of such services.

Multimodal transport services, which are defined as “the movement of goods by at least two different modes of transport (e.g., sea, land, air) performed under a single contract”,⁵⁵ are not contained in the scope of the current MTS negotiations, because they were deemed to inevitably involve various regulatory regimes, which would lead to unpredictable risks. The NGMTS thought that “to cover it would entail dealing with services, sub-sectors and transactions going beyond the maritime transport sector”.⁵⁶ During 1994-1996 negotiating round, delegations challenged the draft schedule and drew attention “to the treatment of door-to-door delivery and the regulatory framework applying to multimodal transport”.⁵⁷ The US representative pointed out that “the current note to the schedule needs to be transformed in order to reflect specific liberalization

⁵⁵ *Supra* note 22 at para. 95.

⁵⁶ NGMTS, Note on the Meeting of 13 July 1994, S/NGMTS/2, 4 August 1994, p. 2.

In the successive meetings, some delegations also supported this statement of the NGMTS. They pointed out that “the substantive amendments of the sort involving multimodal transport would go beyond the mandate of the Group which was limited to negotiations on the maritime transport sector as such, and not other modes of transport.” NGMTS, Note on the Meeting of 6-7 April 1995, S/NGMTS/5, 24 April 1995, p. 8.

⁵⁷ *Ibid.*

commitments in the area”.⁵⁸ Actually, the Chairman of the NGMTS addressed a number of issues⁵⁹ hampering the integration of multimodal transport services as the fourth pillar. At the 9th session of the NGMTS meeting, Australia circulated a discussion paper on “Scheduling Options for Multimodal Transport”⁶⁰ and quoted the comments of the Japanese delegation that “commitments on multimodal transport services would not be valuable in the absence of substantial commitments on the three pillars”.⁶¹ With the development of the conception of logistics and due to the close connection between multimodal transport and maritime transport, it is more logical for the former to be included in the MTS negotiations rather than other modes of transport services.

2.3.3 Responses and Commitments from Member Nations

Following the three-pillar model, since 1995, member nations have invited to make their offers to start off the negotiation. The objectives were to achieve assurances for open markets and non-discriminatory treatment for maritime companies and related commercial operations. As recognized by the WTO Secretariat, a total of 73 WTO

⁵⁸ *Supra* note 56 at 7.

⁵⁹ These issues included whether there were aspects of multimodal transport that could or should be addressed in terms of market access and national treatment commitments – or, alternatively, whether the discussion should be limited to aspects relating to the access to and use of multimodal transport facilities; whether there were definitional issues that needed to be addressed in the context of a discussion on multimodal transport services; whether the mandate embodied in the Decision on Negotiations on Maritime Transport Services was broad enough to cover multimodal activities or multimodal transport as such – and, if so, what were the implications for the negotiations of commitments and exemptions at the end of our negotiations.

NGMTS, Note on the Meeting of 17-19 July 1995, S/NGMTS/6, 3 August 1995, p. 6.

⁶⁰ *Supra* note 47.

⁶¹ NGMTS, Note on the Meeting of 26 and 29 March 1996, S/NGMTS/10, 11 April 1996.

Member States⁶² have made initial offers. Although these commitments cover all of the sub-sectors listed in the *Services Sectoral Classification List*, the delegation from the USA still insists that "of the offers submitted since the negotiating group began its work, the only participants with acceptable offers were Organization for Economic Co-operation and Development ("OECD") nations with no maritime industries to defend",⁶³ and determined that "the results achieved so far fell woefully short of the objectives of the negotiations".⁶⁴

Analysis of the responses and practices of the members in Pillar 1 –

Maritime Transport Services

Regarding the first pillar, out of a total of 49 committed members, 30 included both freight and passenger transportation services, six only freight services and three only passenger services.⁶⁵ Among these commitments, there still existed some limitations, including a ceiling on foreign equity, nationality requirements for the ownership and registration of vessels under the national flag, the requirement to appoint a local agent, limitations on government-owned cargoes, discriminatory taxation, and discriminatory

⁶² *Supra* note 24. These members are as follows:

Albania, Antigua and Barbuda, Aruba, Australia, Benin, Canada, Croatia, Cuba, Egypt, Estonia, the European Community, Finland, Gambia, Georgia, Ghana, Hong Kong, Hungary, Iceland, Indonesia, Jamaica, Japan, Jordan, Korea RP, Kyrgyz Republic, Latvia, Lithuania, Malaysia, Malta, Moldova, Myanmar, the Netherlands Antilles, New Zealand, Nigeria, Norway, Oman, Papua New Guinea, Peru, the Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovenia, Thailand, Trinidad and Tobago, Turkey, and Venezuela.

⁶³ *Supra* note 48.

⁶⁴ *Ibid.*

⁶⁵ *Supra* note 24.

port charges.⁶⁶ For example, the Australian government requires that the representative agent be a resident of Australia and that only companies operating a fleet under the Australian flag may obtain national treatment.⁶⁷ Malaysia only allows foreign enterprises to enter its maritime industry through a representative office, or a joint venture with a maximum equity of 30%, while Benin requires only 20% and Egypt 49%.⁶⁸

An important issue in this pillar is cabotage, which means “the carrying on of trade along a country’s coast, the transport of goods or passengers from one port or place to another in the same country”.⁶⁹ In the WTO MTS negotiations, the issue of cabotage has been reserved to the nations, and no substantial efforts have been made to open domestic shipping markets. However, there were still fourteen members committed this right in their offers.⁷⁰

Due to the exclusion of these impediments, e.g., cabotage, cargo reservations, unilateral retaliatory measures, a total of 39 out of 49 negotiating parties provided conditional offers. Although there are issues of contention in the negotiations on international shipping, the current situation makes this the most promising area for reaching a

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* Iceland, the Republic of Korea, New Zealand, and Thailand also offer similar preferential treatment to ships that are under their national flag.

⁶⁸ *Ibid.*

⁶⁹ *Supra note 54* at 194.

⁷⁰ They are Antigua and Barbuda, Benin, Cuba, Egypt, Gambia, Iceland, Jamaica, the Netherlands Antilles, Papua New Guinea, Peru, the Philippines, Sierra Leone, and Venezuela. *Supra note 39* at 11-16.

preliminary agreement.

*Analysis of the responses and practices of the members in Pillar 2 –
Auxiliary Services*

The Development Research Group of the World Bank has identified two general aspects to achieving additional liberalization in this sector: “One is to ensure that foreign ships serving the domestic market obtain non-discriminatory access to such services. The second is to allow competition, domestic and foreign, in the supply of the service itself.”⁷¹ These aspects may lead further development in the second pillar.

Twenty-eight members have scheduled commitments. In fact, this pillar is a very general category and comprises various kinds of services. Some specific services have received commitments by relatively more members, for example, 15 members have committed to storage and warehousing, and 11 members have committed to maritime agency and freight forwarding,⁷² but the other services, such as customs clearance, container stations, and depots, remained restricted. Hence, there is a great need to reconsider the current grouping if progress is to be made in the negotiations.

⁷¹ Fink, C., Mattoo, A. and Neagu, I. C. (2002), *Trade in International Maritime Services: How Much Does Policy Matter?* World Bank Econ. Rev. 90.

⁷² *Supra* note 24.

Analysis of the responses and practices of members in Pillar 3 – Port Services

Thirteen negotiating members have undertaken commitments on non-discriminatory and reasonable access to port services; however, members have adopted a different attitude to specific services, e.g., towing, pushing, tug assistance, port dredging, and port captains' services.⁷³

In fact, this sector achieved least progress throughout the negotiations. The main reason for this has been the issue of sovereign control.⁷⁴ In the past, most ports in the world were fully or, at least, partially owned by the state, or by a state-owned enterprise. However, with the trend of privatization,⁷⁵ the port industry has gradually been opened to private enterprise. Hence, the negotiating parties can now expect new headway to be made.

2.4 Theory of Index Method and Data Collection

2.4.1 Index Method

The traditional research method of policy analysis mostly relies upon deduction and reasoning. In order to quantify the economic policies and measure the services of trade, scholars introduced quantitative measures, i.e. index measures, to reveal the barriers of

⁷³ *Ibid.*

⁷⁴ *Supra* note 21.

⁷⁵ For an introduction on port privatization generally, see: Cullinane, K.P.B, Song, D.W. and Wang, T. (2003), *Private Sector Participation in Asian Ports*, *Annals of Maritime Studies*, 41, pp. 177-194; Trujillo, L., and G Nombela (1999), *Privatization and Regulation in the Seaport Industry*, Policy Research Working paper No. 2181, World Bank, Washington D.C.

trade policies. This method is firstly developed by Hoekman using the GATS commitment schedules of member nations. He classifies these commitments into three categories and assigns a numerical score to each category:

- ø "None", implying no restrictions are applied for a given mode of supply/sector, a value of 1 is assigned;
- ø "Unbound", meaning no policies are bound for a given mode of supply/sector, a value of 0 is assigned;
- ø "Others", which in practice implies that restrictions are listed for a mode of supply/sector, a value of 0.5 is assigned.⁷⁶

Hoekman calls these scores the *openness/binding factors* and calculates three *sectoral coverage indicators*.⁷⁷

The OECD first applied this method into the practice and achieved to assess the barriers in accountancy, telecommunication and investment⁷⁸. Then a research team from Australia's Productivity Commission, the University of Adelaide, and Australian National University, constructed an elaborate set of *trade restrictiveness indices* for six industries: telecommunications⁷⁹, banking⁸⁰, maritime transport⁸¹, education⁸²,

⁷⁶ Hoekman, B. (1995), 'Assessing the General Agreement on Trade in Services', in Martin, W. and Winters, L.A. (eds) *The Uruguay Round and the Developing Economies*, World Bank Discussion Papers No.307, 339, Washington, D. C.

⁷⁷ *Ibid.*

⁷⁸ OECD (1997), *Assessing Barriers to Trade in Services: Pilot Study Applications to the Accountancy and Telecommunications Sectors*, TD/TC/WP (97)26, Paris: OECD; and OECD (1998), *Open Markets Matter: The Benefits of Trade and Investment Liberalization*, Paris: OECD.

⁷⁹ Warren, T. (2001), 'The Identification of Impediments to Trade and Investment in Telecommunications Services', in Findlay, C. and Warren, T. (eds.), *Impediments to Trade in Services: Measurement and Policy Implications*, New York: Routledge.

distribution⁸³ and professional services⁸⁴. McGuire then applied this method into the maritime services, but he analyzed the restrictions in the maritime services sector from the foreign and domestic dimensions, which does not appropriately reflect the opening degree of main maritime nations in the WTO context⁸⁵.

The main advantage of this method is the transparency of the indices construction. The scoring system is detailed listed and easy to understand how the index values are assigned. The sources of the scoring system are originated from the circulated laws, regulations, administrative policies and other political documents, which resist the personal estimation and prediction. With the aim of reviewing a nation's openness of maritime industry, indices on maritime policies have been constructed. In this research, the indices of the opening degree of a nation's maritime policy are classified into two dimensions, i.e. restrictive measures and support measures, through such classification each maritime nation will be fixed in the Cartesian coordinates. As defined, the former is to prevent foreign enterprises from entering or participating in domestic maritime

⁸⁰ McGuire, G. and Schuele, M. (2001), 'Restrictiveness of International Trade in Banking Services', in Findlay, C. and Warren, T. (eds.), *Impediments to trade in Services: Measurement and Policy Implications*, New York: Routledge.

⁸¹ McGuire, G., Schuele, M. and Smith, T. (2001), 'Restrictiveness of International Trade in Maritime Services' in Findlay C. and Warren T. (eds.), *Impediments to Trade in Services: Measurement and Policy Implication*', New York: Routledge.

⁸² Kemp, S. (2001), 'Trade in Education Services and the Impacts of Barriers to Trade', in Findlay, C. and Warren, T. (eds.), *Impediments to Trade in Services: Measurement and Policy Implications*, New York: Routledge.

⁸³ Kalirajan, K. (2000), *Restrictions on Trade in Distribution Services*, Productivity Commission Staff Research Paper, Ausinfo, Canberra.

⁸⁴ Nguyen, D. (2000), *Restrictions on Trade in Professional Services*, Productivity Commission Staff Research Paper, Ausinfo, Canberra.

⁸⁵ *Supra* note 81.

transport services market and the latter is to encourage and strengthen the competitive ability of domestic enterprises by providing them favorable treatment. Each of them comprises several kinds of specific measures and the objective of the index is to assess the different degrees of these measures - from most restrictive/supportive to least restrictive/supportive.⁸⁶

An important point must be noted that some hinder elements, which are difficult to be justified, have been excluded from the method, for example, excessive bureaucracy, political and macroeconomic uncertainty; weaknesses in the judicial system; high tax rates; a weak framework for corporate governance; and frequent changes in the legal and regulatory environment. Also the research only considers the measures are currently practiced in selected nations and those protective or supportive measures, which were used to be adopted, have been excluded. All data, legislations and materials are up to year 2005.

2.4.2 Data Resources

The analyses and summarization in the thesis are based on a number of sources. The primary sources are 1994 questionnaire distributed by the NGMTS⁸⁷, 2000 transparency exercise questionnaire distributed by The Maritime Initiative Group, Asia-Pacific Economic Co-operation ("APEC")⁸⁸, and Maritime Subsidies issued by Department of

⁸⁶ The application of index method in maritime industry is carried out in the Chapter 3-4.

⁸⁷ *Supra* note 29.

⁸⁸ *Available at*

<http://www.apec-tptwg.org.tw/TPT/tpt-main/Publications/TEQ/assorted-response-to-teq.htm>, (last visited

Transportation USA. Supplementary information has been taken from:

- The 2003 National Trade Estimate Report on Foreign Trade Barriers, issued by the Office of the USA Trade Representative (USTR);⁸⁹
- An Assessment of Maritime Trade and Technology, issued by the Office of Technology Assessment USA;⁹⁰
- The Common Maritime policy, issued by European Parliament;⁹¹
- Maritime Industry: Cargo Preference Laws - Estimated Costs and Effects, issued by the USA General Accounting Office;⁹²
- 2003 Review of Maritime Transport, issued by United Nations Conference on Trade and Development (UNCTAD);⁹³
- Global Economic Prospects and the Developing Nations 2003, issued by the World Bank;⁹⁴
- Other relevant academic papers.⁹⁵

August 1, 2006).

⁸⁹ Available at <http://www.ustr.gov/reports/nte/2003/>, (last visited August 1, 2006).

⁹⁰ Available at <http://ntl.bts.gov/data/OTA/8302/8302.pdf> (last visited August 1, 2006).

⁹¹ Available at http://www.europarl.eu.int/workingpapers/tran/w14/default_en.htm, (last visited August 1, 2006).

⁹² Available at <http://ntl.bts.gov/DOCS/rc9534.html>, (last visited August 1, 2006).

⁹³ Available at <http://www.unctad.org/Templates/webflyer.asp?docid=4126&intItemID=2096&lang=1>, (last visited August 1, 2006).

⁹⁴ Available at <http://www.worldbank.org/prospects/gep2003/index.htm>, (last visited August 1, 2006).

⁹⁵ The analysis also refers to following materials:

- Delegation of Australia (2000), *Maritime Transport Services and the GATS*, APEC Transportation Working Group 17th Meeting;
- Francois, J. and Wooton, I. *Trade in International Transport Services: The Role of Competition*, a copy can be found at <http://ideas.repec.org/p/dgr/uvatin/20000057.html>, (last visited August 1, 2006).
- Chia, L. S., Onyirimba, L. C. and Akpan, G. S., *Liberalization of Maritime Transport Services: Directions and Options for Asia*, a copy can be found at <http://www1.worldbank.org/wbiep/trade/manila/maritime.pdf>, (last visited August 1, 2006).
- Yercan, F. (1998), *Maritime Transport Policy of Turkey*, Transport Policy 5, pp. 259-66.
- Hong, S.Y. (1995), *Marine Policy in the Republic of Korea*, Marine Policy 19(2), pp. 97-113.
- Paixao, A.C. and Marlow, P.B. (2001), *A Review of the European Union Maritime policy*, Maritime Policy and Management 28(2), pp. 187-98.

According to the UNCTAD Review of Maritime Transport 2005⁹⁶, data relating to maritime industry of Top 35 maritime nations in terms of gross tonnage (1000 gt and above), which are either MTS negotiation participants or WTO members⁹⁷, have been collected. In year 2005, they controlled 24,806 merchant fleets, which account for 79.77% of the whole world, and all the fleets have 753,104 deadweight tonnages, which account for 89.70% of the world⁹⁸. Hence, to a large extent, these selected nations can stand for the global maritime industry.

Table 2 - 1 The 35 Most Important Maritime Nations 2005

Nationality	Vessel Numbers	Deadweight Tonnage
Greece	2,984	155,144
Japan	2,945	117,662
Germany	2,615	57,911
China	2,612	56,812
United States	1,633	46,338
Norway	1,589	43,989
Hong Kong (China)	605	40,993
Republic of Korea	939	27,258
United Kingdom	885	25,843
Taiwan Province of China	531	23,331

⁹⁶ UNCTAD (2005), *Review of Maritime Transport 2005*.

⁹⁷ The selected shipping nations are: E.C. members, Japan, Norway, USA, China, Hong Kong China, Korea (South), China (Taiwan), Singapore, India, Turkey, Malaysia, Switzerland, Canada, Brazil, Philippines, Indonesia, and Australia.

In the Top 35 shipping nations, Russia, Saudi Arabia, Iran, Kuwait, United Arab Emirates and Ukraine are neither WTO MTS negotiation participants, nor WTO members, so they have been excluded from the quantification of maritime policy. Although the Russia is yet a WTO member, its economic and political power upon maritime industry shall not be neglected. A general information about the maritime policy of the Russian Federation may refer to Kuroyedov, V. I. and Moskovenko, M. V., *Russia's National Maritime policy*, Military Thought (January 2002).

E.C. here includes only the 15 original members, i.e. Greece, Germany, UK, Denmark, Italy, Sweden, Netherlands, France, Belgium, Spain, Finland, Cyprus, Poland, Latvia, and Portugal.

⁹⁸ *Supra note 96*.

Singapore	740	22,333
Denmark	646	16,867
Russian Federation*	2,083	15,250
Italy	666	13,446
India	386	12,709
Switzerland	324	11,474
Saudi Arabia*	123	11,062
Malaysia	327	9,835
Iran, Islamic Republic of*	172	9,478
Turkey	648	8,768
Belgium	178	8,124
Netherlands	705	6,897
France	275	6,694
Canada	325	5,979
Indonesia	672	5,754
Brazil	151	5,425
Sweden	322	5,419
Philippines	326	5,008
Spain	319	4,363
Kuwait*	45	3,791
Cyprus	76	3,102
Thailand	297	2,982
Ukraine*	393	2,679
United Arab Emirates*	134	2,658
Australia	85	2,644
Total	27,756	798,022
World Total	31,097	839,633
% of World Total	89.26%	95.04%

Source: UNCTAD (2005), *Review of Maritime Transport 2005..*

Note: This paper discusses the opening degree in the context of the WTO, hence, the nations, which are neither MTS negotiating parties nor WTO members, i.e. the nations with "*" symbol in the above table have been excluded.

2.5 Summary

The evolutionary history of maritime theory shows that the controversy between liberalism and protectionism is everlasting and the focal issue has changed over time. Even though economists protest that *laissez faire* benefits the international economy, it is still difficult

to tell either liberal or protective maritime policies are more adaptable to a specific nation, because the national interests and world interests are not “two in one box”. Generally, maritime policy is a series of economic, legal and administrative regulations, for the sake of national security and developing objectives, to ensure the development of its national fleets and operation of its maritime industry, by means of government interference and financial support.

To examine whether a nation’s maritime policy is appropriate for its development of maritime industry, it must set out the developing objectives of its national maritime industry first, and take the following complex factors into consideration, including historical, economical, geographical, political, social and military elements. At the same time, the discussion on the maritime policy issues shall not be parochially confined to liberalism versus protectionism, due two they are not an either-or question. One of the thesis’s objectives is to explore an optimum way for a nation to formulate its maritime policy and defined economic indicators that may reflect the developing status of a nation’s maritime industry.

CHAPTER 3

THEORETICAL FRAMEWORK FOR MARITIME POLICY

This Chapter intends to establish a theoretical framework on maritime policy as defined in Chapter 1. To this aim, together with other established indicators for maritime industry, two new indicators, i.e. NCR and NSER, are introduced to observe the developing status quo of national maritime industry. Synthesizing these indicators, a regression model for maritime policy is established. This will be verified by real work data and a case study of the US.

3.1 Introduction

Maritime policy is closely linked to the development objectives of national maritime industry and firmly based on the reality of its economic conditions. Maritime Policy is more the result of economic circumstance than of rational analysis of policy makers as it appears. With respect to the legal theory, the traditional research methods for maritime law and policy are reasoning and deduction, which are based on logic and usually lack of economic analysis and data support. This Chapter aims to identify economic indicators that reflect the basis of national maritime policy, and establish the relation between economic basis and national maritime policy by regression test.

Indicators are defined to help us to understand the complex realities. Comparing with the term of “determinant”, an indicator is indirect. The empirical study reveals the inter-

relationship between these indicators and the maritime policy. In other words, these indicators reflect the economic foundation for the formulation of national maritime policy, and through the observation over these indicators, an optimum maritime policy for a specific nation shall be predicted. However, it should be noted that, due to the complex of economic foundation for maritime policy making, the relationship between maritime policy and its economic foundation cannot be mirrored by simple regression in a perfect way.

This Chapter identifies the indicators for the development of maritime policy against the background of globalization, and establishes the relation between the maritime policy and economic foundation which is described by some indicators. For example, the concept of ‘National Carriage Rate (‘NCR’)' and ‘National Seafarer Employment Rate (‘NSER’)' are introduced as two primary indicators to describe the development of national maritime industry and tolerance for further opening its shipping market. Then other indicators, especially the ‘Balance of Payment (‘BOP’)', are discussed in the following sector. Through the application of index measure, maritime policies of selected nations have been quantified in the context of WTO maritime transport service negotiation to describe their opening degree. When running the regression analysis for the data of twenty-two maritime nations, the specific relation between each identified indicators and national maritime policy has been figured out. Before the end of this Chapter, the US case study is reviewed to validate the results of defined economic indicators.

3.2 Framework of Indicators for Maritime Policy

Before defining indicators of national maritime policy, it must clarify the relation between economic structure and policy making first. In the theory of economic sociology, the relation between economy and policy is at the core position and gain attention of many famous scholars. In the 19th century, Karl Marx observed that ‘the totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness’¹. Confining to the maritime industry, it can be explained that the direction of national maritime policy is affected by the economic structure of that nation.

Later, Max Weber, a well-known socialist, economist, as well as jurist, systematically expatiated on the relation between law and economy. In the masterpiece “Economy and Society”, he wrote that “legal guaranties are directly at the service of economic interests to a very large extent. Even where this does not seem to be, or actually is not, the case, economic interests are among the strongest factors influencing the creation of law. For, any authority guaranteeing a legal order depends, in some way, upon the consensual action of the constitutive social groups, and the formation of social groups depends, to a large extent, upon constellations of material interests.”² In other words, the development of law is subject to the development of society (including economy) and the alteration of the economy will arouse the change in law. When the law and economic interests are in the opposite direction,

¹ Marx, K. and Engels, F. (1975), ‘A Contribution to the Critique of Political Economy’ in *Collected Work* Vol. 29, London: Lawrence & Wishart, pp. 263-64.,

² Weber, M. (1978), *Economy and Society: An Outline of Interpretive Sociology*, University of California Press, p.334.

“only a limited measure of success can be attained through the threat of coercion supporting the legal order”³

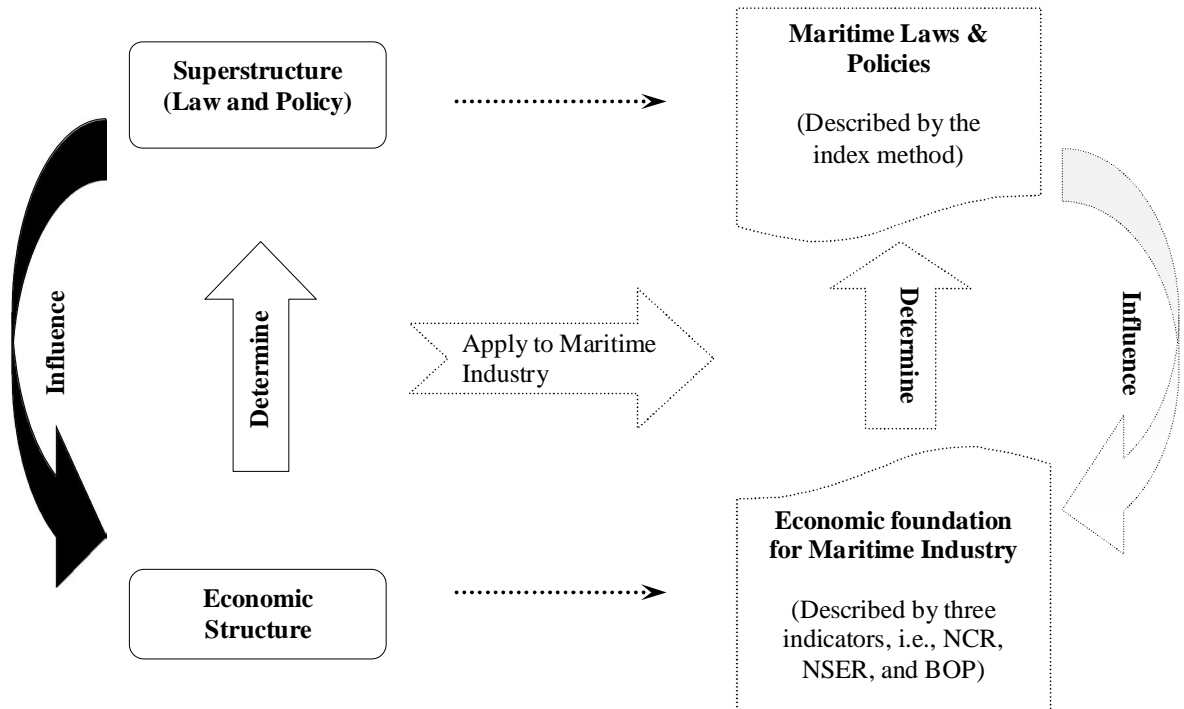
Roscoe Pound, as the representative scholar of the school of jurisprudence of interest, defined the interest as “a demand or desire or expectation which human beings, either individually or in groups or associations or relations, seek to satisfy, of which, therefore, the adjustment of human relations and ordering of human behavior through the force of a politically organized society must take into account.”⁴ In general, the school of jurisprudence of interest protests that in the formulation of public policy, social interest has a determinant impact. Limited to the maritime industry, social interest contains two components – public interest and private interest. The former mainly reflects as national interest, which includes the consideration of national security, national economic development and industrial developing status. The later refers to the interest of industry, which consists of operating environment, survival circumstance, and employment status.

Above all, a basic theory is illuminated on the explanation of the relation between superstructures (national law and policies) and national economic structure. This relation shall be stated as superstructure is determined by national economic structure and influences the development of national economy.

³ *Ibid.*

⁴ Pound, R. (1959), *Jurisprudence* Vol. 3, ST. Paul. MINN. West Publishing Co., p. 16.

Figure 3 - 1 Relation between Maritime Policy and Economic Foundation



In the maritime field, the superstructure refers national maritime laws and policies, which in this research is described by the index method, and economic structure refers to economic foundation of the maritime industry, which are described by three indicators defined in this Chapter. Then the relation between maritime policies and economic foundation for maritime industry established by the empirical study shall be depicted by the Figure 3 – 1, i.e. maritime laws and policies are determined by economic structure of national maritime industry and influence the development of maritime industry.

In the theory of international economics, it is believed that ‘nations accord heaviest protection to industries in which they have a comparative disadvantage’⁵. The main indicators of whether a nation will adopt protectionism in trade are national defense, income redistribution, optimum tariffs, the balance of trade, protection of jobs, the existence of infant (or dying) industries, spillover effects, strategic trade policies, reciprocity, and a level playing field.⁶ Maritime policy, which is based on ‘national interest’⁷ and is a part of the legal and political superstructure of a nation, shall be also determined by the economic structure of that nation. Sturmeý incorporated the characteristics of the maritime industry and listed eleven items that affect the making of national maritime policies; i.e., defense, avoidance of disruptions, prestige, fostering trade, saving foreign exchange, employment, protection from competition, retaliation, improving quality, and compensation.⁸

Having critically reviewed these theories and taking into account of the characteristics of globalization, three fundamental economic indicators, i.e. NCR, NSER, and BOP, have been justified in the formulation of national maritime policies. The relation between national maritime policy and economic indicators shall be illustrated as:

$$\text{MAR. POL}^t Y_{it} = \alpha_0 + \alpha_1 \text{NCR}_{it} + \alpha_2 \text{NSER}_{it} + \alpha_3 \text{BOP}_{it} + \epsilon_{it} \quad (1)$$

⁵ Kreinin, M. E. (2002), *International Economics: A Policy Approach 9th edition*, South-Western Thomson Learning, p. 78.

⁶ Coughlin, C. C., Chrystal, K. A. and Wood, G. E. (2000), ‘Protectionist Trade Policies: A Survey of Theory, Evidence, and Rationale’ in Frieden, J. A. and Lake, D. A. (eds.) *International Political Economy: Perspectives on Global Power and Wealth*, 4th edition, Routledge London & New York, pp. 310-15.

⁷ Sletmo, G. K. (2002), ‘The Rise and Fall of National Maritime policies’ in Grammenos, C. Th. (ed.) *The Handbook of Maritime Economics and Business*, LLP London / Hong Kong, p. 485.

⁸ Sturmeý, S. G. (1975), ‘A Consideration of the Ends and Means of National Maritime policies’ in Sturmeý S. G. (ed.) *Shipping Economics: Collected Papers*, London: The Macmillan Press, pp. 186-95.

Where i is the nation; t is the time; MAR. POL'Y is the opening degree of a selected nation's maritime policy. NCR is the indicator of national carriage rate, which reflects the development of national waterborne trade and merchant fleets. NSER is the indicator of national seafarer employment rate, which reflects national maritime employment situation against its national owned fleets. BOP is the indicator of the balance of payment, which is adopted to describe the economic situation of the nation. And ϵ is the stochastic disturbances term, i.e., the standard error of the equation.

3.3 Measure of National Carriage Rate (NCR)

To describe a nation's tolerance for further opening its maritime industry and to observe the relation between maritime policy and the development of its maritime industry, this study introduces the new concept, namely 'National Carriage Rate (NCR)'. The premise of the NCR is that the capacity of the world merchant fleet is sufficient to carry the world's waterborne trade cargoes. It is assumed that the world carriage rate ('WCR') is a ratio between the world's total waterborne trade cargoes in terms of tonnage and the world's fleet in terms of total deadweight tonnage ('DWT'), and that the WCR equals 1 at any given time. The NCR can then be described by formula (2):

$$NCR = \frac{\text{National Fleet (DWT)}}{\text{National Trade (Ton)}} \times \frac{\text{World Total Trade (Ton)}}{\text{World Total Fleet (DWT)}}. \quad (2)$$

Depending on the measure of NCR, there are three typical situations:

1) Where the $NCR > 1$, this means that the fleet that a nation owns can carry more than the trade volume the nation generates. Under this situation, the nation's maritime industry is viewed as being well developed, so its maritime policy will tend to be open and that nation

will tend to further explore the international market for its fleet and therefore press other nations to open their shipping markets. Norway and Hong Kong are typical examples of this category with NCRs in 2001 much higher than the WCR.

2) Where the NCR close to 1, this means that the nation's maritime industry is balanced against the volume of its waterborne trade. Its maritime policy will therefore tend to be neutral. In the year 2001, South Korea and the EC belonged to this category.

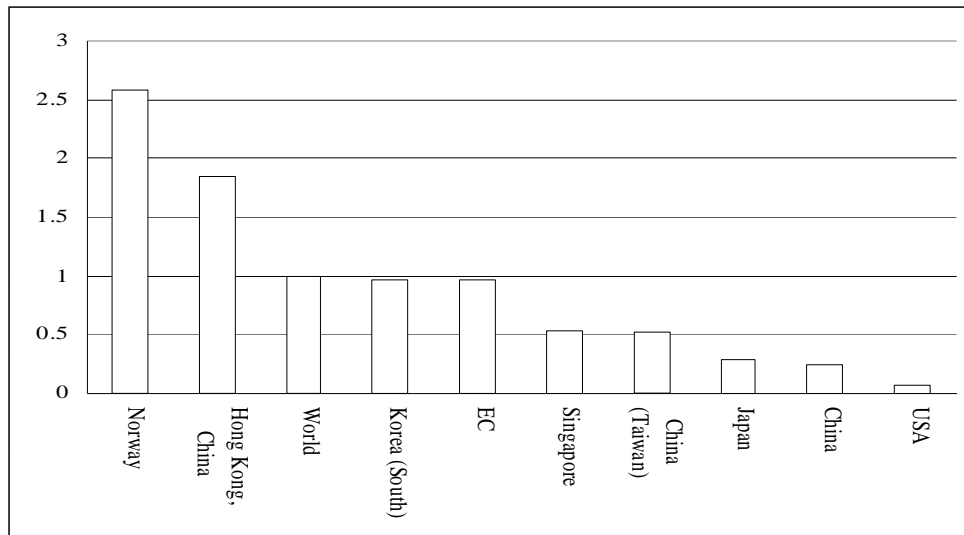
3) Where the $NCR < 1$, the nation's maritime industry is insufficient and cannot provide enough capacity for its waterborne trade volume. Therefore, nations with a lower NCR tend to adopt a protectionist policy, i.e., to prevent foreigners from entering their national shipping market, and to provide high subsidies or other support measures to their national fleet. The US is a typical example of this category and is well known for its protection maritime policies.

Table 3 - 1 National Carriage Rate 2001

Nation	DWT of National Flag Fleets (000' ton)	Waterborne Trade Volume (000' ton)	NCR
Norway	32,305	181,000	2.585602
Hong Kong, China	22,692	178,210	1.844638
Korea (South)	9,358	140,544	0.964587
E. C	109,813	1,653,400	0.962158
Singapore	11,528	313,500	0.532705
China (Taiwan)	6,985	196,863	0.514011
Japan	17,460	880,000	0.28743
China	23,012	1,326,750	0.251267
USA	10,903	2,110,000	0.074857

Source: World Fleet Statistics 2002, Lloyd's Register Fairplay.

Figure 3 - 2 National Carriage Rate 2001



Source: ISL Shipping Statistics Yearbook 2002

NCR of the top nine maritime nations have been displayed in Figure 3-2, namely, Norway, Hong Kong, South Korea, the EC, Singapore, Taiwan, Japan, China, and the US. Their NCRs are calculated against the world carriage rate (=1) (See Figure 3-2). The result demonstrates that Norway and Hong Kong have relatively higher NCRs and that China and the US have the lowest NCRs. The correlation test between the maritime policy (which is quantified in 3.6) and the NCR of the selected nations lays out a convincing result (0.8352039), which proves the tight relation between them.

3.4 Measure of National Seafarer Employment Rate (Employment Argument)

A nation may be said to have a maritime policy when it encourages, permits, or formulates measures to interfere with or control the free play of market forces with regard to the

employment of shipping.⁹ Pursuant to public choice theory, politicians always gain public support by providing protectionist legislation, because workers tend to give their vote and campaign contributions to politicians who support to protect their industry, and to penalize those who do not.¹⁰ Evidence, which supports this theory, is that the number of EC seafarers employed on EC flagged ships fell by 37% in the space of ten years (1985-1995), while the number of seafarers from non-EC countries rose by 14% over the same period. Fifty-one per cent of job losses are thought to be due to flagging out.¹¹ This has caused great concern in the EC, and new policies are being formulated to reverse this trend.

To figure a nation's employment competency of seafarers and development of seafarer training, a rate, named 'National Seafarer Employment Rate (NSER)', between national seafarer number and its vessel number has been established. The premise of the NSER is that the number of total world seafarers can meet the demand of the world vessels. It is assumed that the world seafarer employment rate ('WSER') is a ratio between the world total seafarer number and the world total vessel number, and that the WSER equals 1 at any given time.

Therefore, the NSER of a nation can then be described by formula (3):

$$\text{NSER} = \frac{\text{Nation's Seafarer Number}}{\text{Nation's Vessel Number}} \times \frac{\text{World Total Vessel Number}}{\text{World Total Seafarer Number}}. \quad (3)$$

⁹ *Ibid.*

¹⁰ *Supra* note 5 at 312.

¹¹ Restrictions on seafarer employment shall refer to Leggate, H. and McConville, J. (2002), 'The Economics of the Seafaring Labour Market', in Grammenos, C. (ed.), *The Handbook of Maritime Economics and Business*, Lloyds of London Press Publication.

The results of NSER analysis can be observed from two aspects, i.e. one is the employment competency of national seafarers and the other is the development of a nation's seafarer training system.

1) Where the $NSER > 1$, this indicates the supply of a nation's seafarers exceeds its national fleet demand of seafarers, which means that its seafarers would possible confront a high competency of employment. In this circumstance, a nation usually takes protection policy, e.g. requirement of national crew for national fleets, to ensure the employment of national seafarers, or to export seafarers to foreign flag fleet to decrease the employment pressure. On the other hand, this situation also reflects a developed training system of seafarers, which can provide sufficient number to meet the demand of national fleets. The Philippines ($NSER = 18.6$), Indonesia ($NSER = 4.04$), India ($NSER = 3.42$), Ireland ($NSER = 2.44$), Australia ($NSER = 2.29$), Finland ($NSER = 1.74$) and Spain ($NSER = 1.2$) are the top seafarer suppliers to international ships after manning their own national ships.

2) Where the $NSER$ close to 1, this means that the nation's seafarers is balanced against the demand of its national fleets. Its maritime policy will therefore tend to be neutral and its seafarer training system develops stably. In the year 2001, USA, the UK, China and Taiwan belong to this category.

3) Where the $NSER < 1$, a nation's seafarer training system is insufficient and cannot provide enough seafarers for its national fleets demand. Therefore, nations with a lower $NSER$ tend to adopt a liberal policy, e.g. eliminate or diminish the requirement of national crew. The results of this study show EU members, Japan, Hong Kong and Singapore are in this

category. Meanwhile, nations of this category shall take a consideration of its seafarer training mechanism to bring up more national seafarers.

Table 3 - 2 National Seafarer Employment Rate 2001

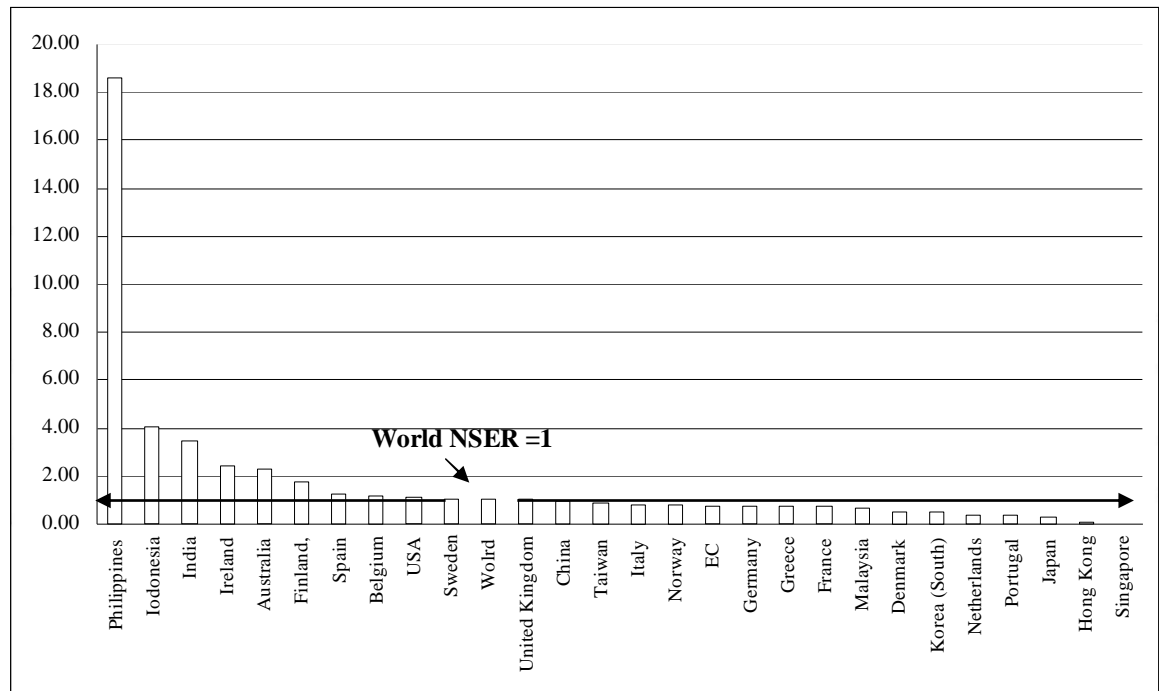
Nations	Vessel Number	Number of Seafarers	NSER
USA	335	15,207	1.13
China	2,113	82,017	0.96
Taiwan	198	7,046	0.88
Norway	679	22,200	0.81
EC	5,276	159,497	0.75
Korea (South)	792	16,488	0.52
Japan	2,937	31,013	0.26
Hong Kong	535	1,943	0.09
Singapore	973	1,181	0.03

Source: Institute for Employment Research (2002). BIMCO/ISF 2000 Manpower Update: The Worldwide Demand for and Supply of Seafarers: Main Report. University of Warwick.

To test the study of NSER, data of 27 maritime nations¹² are collected. Their NSER are calculated against the world carriage rate (=1) (See Figure 3-3). The result demonstrates that Japan, Hong Kong and Singapore have relatively lower NSER and the Philippines have the highest NSER. The high correlation rate (0.767749) between national maritime policy and its National Seafarer Employment Rate verifies the existence of interactive relation.

¹² These economies include: Australia, Belgium, China P. R., Denmark, EC, Finland, France, Germany, Greece, Hong Kong, India, Indonesia, Ireland, Italy, Japan, Korea (South), Malaysia, Netherlands, Norway, Philippines, Portugal, Singapore, Spain, Sweden, Taiwan, United Kingdoms and the US.

Figure 3 - 3 National Seafarer Employment Rate 2001



Source: Institute for Employment Research (2002). *BIMCO/ISF 2000 Manpower Update: The Worldwide Demand for and Supply of Seafarers: Main Report*. University of Warwick.

3.5 Other Indicators

3.5.1 National Security Argument

As early as in the 1700s, even Adam Smith departed from his otherwise scathing attacks on trade barriers to sanction the restrictive Navigation Acts where shipping and other defence industries were involved.¹³ But, under the name of national security, many nations still practice protective measures to support their national fleets, e.g., the US Ready Reserve Force ('RRF') programme¹⁴. This argument indicates that more restrictive policies would help a nation to develop or to be ready to protect its domestic industries, which would be important in possible future military actions. During the process of policy-making, if

¹³ Pugel, T. A. (2004), *International Economics* 12th edition, McGraw Hill Irwin, p. 204.

¹⁴ Detailed discussion on the tools for maritime protection is placed in the Chapter 4.

merchant vessels are more involved in national affairs, e.g., war, international aid, etc., the nations whose flags they fly would possibly be more likely to adopt protectionist measures to support or subsidize the operation of such vessels. The obvious reason for this is that, without sufficient remedies, these merchant vessels will logically have less of an ability to compete in the world market.

3.5.2 Fostering Trade Argument

In the 17th century, Sir Walter Raleigh, succinctly sums up the prevailing view on shipping: ‘Whosoever commands the sea commands trade; whosoever commands the trade of the world commands the riches of the world, and consequently the world itself.’¹⁵ The use of a merchant marine to foster trade and assistance of the fleet for that purpose is of questionable value. An uneconomic merchant marine will not foster trade unless the revenue raised to pay the subsidies (or to cover the losses of a state-owned fleet) is obtained from taxes that neither directly nor indirectly impinge on that trade.¹⁶ But it is obvious that the under development of national maritime industry would hamper the development of its international trade. Hence, nations with a developed trade (national, intranational, or international) are more concerned about the developing status of their maritime industry than those whose trade is less developed. If national merchant fleets cannot satisfy their aim of the trade development, the state will provide more measures to support the development of its national flag vessels and vice versa.

¹⁵ James, E. T. (1995), *Military Strategy Note: Strategic Geography*, Washington: Industrial College of the Armed Forces 6.

¹⁶ *Supra* note 8 at 188-89.

3.5.3 Dying and Infant Industry Argument

When national strategically important industries face strong competition from abroad and decline over a long period, the nation will incline to adopt protective measures to ensure the survival and development of its national industries. From the theoretical aspect, this argument is called “dying and infant industry”, which means that ‘rising imports of a product or service threaten the well-being and even the survival of import-competing domestic firms and industries’.¹⁷ Regarding the maritime industry, this theory makes those measures to support such industries or restrictive measures against foreign competitors be justified.¹⁸ Then, if national industry faces threats or is at its infant face, the state will probably adopt more restrictive maritime policies or provide more assistance to the industry.

3.5.4. Balance of Payments Argument

In the theory of international economics, a deficit in the balance of payments (‘BOP’) automatically causes a slowdown in the national economic activity¹⁹ and *vice versa*. Hence, nations enact protectionist policies in the hope of eliminating a deficit or increasing a surplus, and in their perspective, larger surplus are ‘beneficial for the development of their economy’.²⁰

¹⁷ *Supra* note 13 at 200.

¹⁸ *Ibid* at 195.

¹⁹ *Supra* note 5 at 286.

²⁰ *Supra* note 6 at 311.

Empirical evidence found by this study supports the above argument - nations with a surplus usually adopt liberal maritime policies and *vice versa*.²¹ For example, the EC, Hong Kong, Japan, Singapore, and Switzerland, which maintained a surplus in their balance of payments for a relatively long period, adopted a *laissez faire* approach to their maritime policies, while Brazil and the US, which have constantly suffered deficits, are identified by this study as the most protective maritime nations.²² Another case is China who, after putting in practice policies on economic reforms and opening-up, increased its BOP surplus and then gradually liberalizing its maritime policies afterwards.²³

3.6 Measurement of Maritime Policy

Index method, which was developed to identify types of barriers and the relative opening degree afforded to particular sectors across nations²⁴, is applied to quantify a nation's maritime policy in the global era, especially in the context of the WTO. All of the restrictive and support measures of the selected maritime nations were compiled, and then assigned scores and grouped into categories. Each category was assigned a numeric weight based on subjective assessments of the costs of restrictions to economic efficiency. Finally, the

²¹ In order to make the indicator of BOP more conspicuous, this study examines this indicator by a BOP Rate, which is a rate between an economy's BOP and its Gross Domestic Product ('GDP'). Both BOP and GDP adopt the current account value in this study.

²² Records of Balance of Payments:

Surplus Economies: E. U. (15 nations 9,600 million EUR to 63,000 million EUR (1993-2002) (Source: Eurostat); Hong Kong 2,529 million USD to 17,414 million USD (1998-2003); Japan 10,910 million USD to 135,216 million USD (1977-2003); Singapore 1,937 million USD to 18,704 million USD (1988-2002); and Switzerland 3,427 million USD to 26,011 million USD (1981-2002). (Source: World Development Indicators database)

Deficit Economies: Brazil -6,968 million USD to -7,696 USD (1975-2002); and USA -980 million USD to -541,834 million USD (1971-2003). (Source: World Development Indicators database).

²³ The surplus of China's balance of payments grew from 5,674 million USD to 35,422 million USD during 1982-2002 (Source: World Development Indicators database). An analysis on the gradual liberalization of China maritime policies can be found in K. X. Li, Cullinane, K., Hong Yan and Cheng Jin (2005), Maritime policy in China after WTO: Impacts and Implications to Foreign Investment, *Journal of Maritime Law and Commerce* 36 (1), pp. 77 -139.

²⁴ Stern, R. M. (2000), *Quantifying Barriers to Trade in Services*, available at <http://www.fordschool.umich.edu/rsie/workingpapers/wp.html>, (last visited August 1, 2006).

indices were computed using these scores and weights to quantify the overall opening degree.²⁵

The indices of national maritime policy are divided into two dimensions, i.e., restrictive measures and support measures, by which each maritime nation will get a score. Restrictive measures refer to measures that prevent foreign enterprises from entering or participating in the domestic maritime transport services market. Support measures refer to policy measures that encourage and strengthen the competitive ability of domestic enterprises by providing them with favorable treatment. Both of restrictive measures and support measures comprise several kinds of specific measures and the objective of the index is to quantify national maritime policy by mapping the selected nations' preferred positions in an index chart. The sources for the analyses are listed in the Chapter 2.

Support Index describes the degree of national supports (subsidies) to its national maritime industry, while Restrictive Index reflects the restrictions on foreign companies entering into its national market. The scores range from 0 (least restrictive or supportive) to 1 (most restrictive or supportive). The higher scores mean higher degree of support or restriction by the nation.

For example, on the form of commercial presence for foreign-invested enterprises, if a nation requires a specific type of legal entity or joint venture, then it will get a score of 1.00. When foreign suppliers of shipping services must be represented by a local agent, then it

²⁵ Chen, Z. and Schembri, L. (2001), *Measuring the Barriers to Trade in Services: Literature and Methodologies*, available at <http://www.dfait-maeci.gc.ca/eet/pdf/17-en.pdf>, (last visited August 1, 2006)

will get a score of 0.50 and if there is no restrictions on the establishment of foreign maritime services provides, then it will get a score of 0.

Another example of the scoring system is subsidies, when operating subsidies are available from the national level, then such nation will get a score of 0.30 and the same situation for the construction subsidies. When the operating subsidies are available from the provincial level, the nation will get a score of 0.15, which is also applicable to the construction subsidies. And when other subsidies are provided for national flag operators, the nation will get a score of 0.1.²⁶

²⁶ More detailed examples on the restrictive measure and support measure practicing in selected maritime economies are discussed in the Chapter 4.

Table 3 – 3 Index of Restrictive Measures

Score	Categories of Restrictions
	<i>Conditions on the right to fly the national flag</i>
0.40	Commercial presence is required in the domestic economy.
0.30	50 per cent or more of equity participation must be domestic.
0.20	50 per cent or more of the crew are required to be domestic.
0.10	The ship must be registered.
	<i>Form of commercial presence</i>
1.00	Measures that restrict or require a specific type of legal entity or joint venture arrangement.
0.50	Suppliers of shipping services must be represented by a local agent.
0.00	No restrictions on establishment.
	<i>Equity ceiling requirement</i>
	The score is inversely proportional to the maximum equity participation permitted in an existing shipping service supplier. For example, equity participation to a maximum of 75 per cent of an existing shipping service supplier would receive a score of 0.25.
	<i>Port Services</i>
0.30	Some restrictions on access to ports.
0.20	Mandatory use of pilotage.
0.15	Mandatory use of towing.
0.10	Mandatory use of tug assistance.
0.05	Mandatory use of navigation aids, berthing services, waste disposal, anchorage, casting off (each).
	<i>Discretionary imposition of restrictions, including for retaliatory purposes</i>
1.00	Governments are able to impose selective restrictions.
0.00	Governments are unable to impose selective restrictions.
	<i>Composition of the crew</i>
	The score is inversely proportionately to the percentage of the crew that can be comprised of foreigners. For example, a score of 0.80 is allocated where 20 per cent of the crew can be comprised of foreigners.
	<i>Cabotage</i>
1.00	Foreigners generally cannot provide domestic maritime services.
0.75	Foreigners that fly the national flag can provide domestic maritime services.
0.50	Restrictions on the type and length of time cargoes can be carried.
0.00	No cabotage restrictions.

Table 3 – 4 Index of Support Measures

Score	Support Category
	<i>Cargo preferences</i>
0.30	The majority of the cargo produced, contracted, or obtained by government or its agents must be transported by national flag vessels.
0.30	The majority of the cargo financed or guaranteed by the government or its financial institutions must be transported by national flag vessels.
0.15	The majority of the cargo produced, contracted, or obtained by the government or its agents shall conditionally be transported by national flag vessels.
0.15	The majority of the cargo financed or guaranteed by the government or its financial institutions shall conditionally be transported by national flag vessels.
	<i>Subsidies</i>
0.30	Operating subsidies are available from the national level.
0.30	Construction subsidies are available from the national level.
0.15	Operating subsidies are available from the provincial level.
0.15	Construction subsidies are available from the provincial level.
0.10	Other subsidies are available for national flag operators.
	<i>Tax Preferences</i>
0.40	By depreciation in advance.
0.30	Preferential tax in the construction of vessels.
0.30	Preferential tax in the operation of vessels.
	<i>Cargo reservation</i>
1.00	A nation has a bilateral cargo sharing agreement or any kind of unilateral cargo reservation scheme.
0.00	A nation is not involved in any kind of cargo reservation scheme.

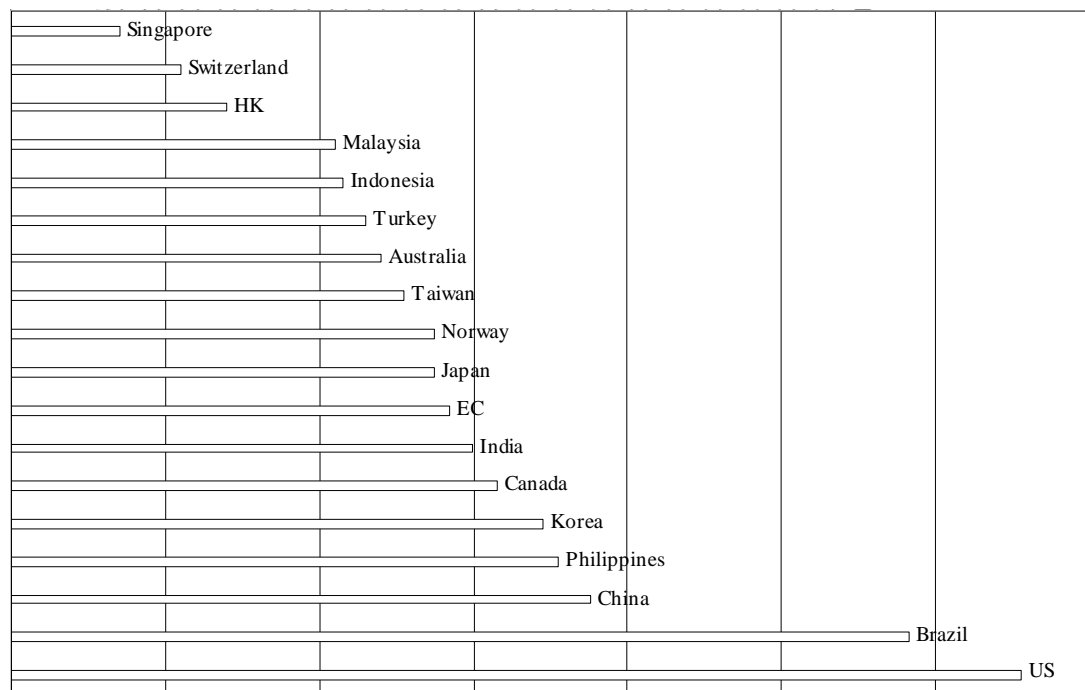
Note: some nations also provide preferential taxes for foreign MTS suppliers. Counting this prompting effect, the score is deducted in proportion to the percentage of such a preference. For example, a score of 0.20 is deducted from the above point where 20 per cent of the preferential tax is for foreign suppliers.

Source: This index is developed based on previous studies, including:

1. Chen, Z. and Schembri, L. (2001), *Measuring the Barriers to Trade in Services: Literature and Methodologies*;
2. Schuele, M. and Smith, T. (2000), 'Restrictiveness of International Trade in Maritime Services' in Findlay C. and Warren T. (eds.), *Impediments to Trade in Services: Measurement and Policy Implication*, Routledge, pp. 172-88;
3. OECD (1997), *Assessing Barriers to Trade in Services: Pilot Study Applications to the Accountancy and Telecommunications Sectors*, TD/TC/WP (97)26, Paris: OECD;
4. OECD (1998), *Open Markets Matter: The Benefits of Trade and Investment Liberalisation*, Paris: OECD;
5. Fink, C., Mattoo, A. and Neagu, I. (2001), *Trade in International Maritime Services: How Much Does Policy Matter?* WPS2522, World Bank Research Working Paper;
6. Micco, A. and Perez, N. (2002), *Determinants of Maritime Transport Costs*, Inter-American Development Bank Research Working Paper #441.

Figure 3-4 figures out the results of the quantification of the selected maritime nations. These are the combination of national restrictive score and its support score. Nations with higher score have relatively protectionist maritime policy and *vice versa*. Among all selected nations, the US shipping market is the most restrictive for overseas service providers while the Brazil ranks second. Meanwhile, Singapore and Switzerland have the most open markets in maritime services.

Figure 3 - 4 Quantification of Maritime Policy



3.7 Regression Results

In order to testify the relations between the economic indicators and maritime policy, this study collects the data about the NCR, NSER and BOP of 22 nations²⁷ and applies the

²⁷ They are Australia, Denmark, European Community, Finland, France, Germany, Greece, Hong Kong China, India, Italy, Japan, Korea (South), Malaysia, Netherlands, Norway, Portugal, Singapore, Spain, Sweden,

regression analysis, which is a classic statistical method to examine the relation between one or more independent variables X and dependent variable Y . In this study, the NCR, NSER and BOP are defined as three independent variables²⁸, the change of which would possible incur the change of the dependent variable – a nation's maritime policy. The regression results display in the Table 3-5.

Table 3 - 5 Regression on Indicators of Maritime Policies

R Square	0.758556878540198	
Adjusted R Square	0.715949268870821	
Intercept	2.56199450482366	
Variables	<i>Coefficients</i>	<i>P-value</i>
National Carriage Rate	-0.280693158	0.02620883
National Seafarer Employment Rate	1.5512102053	0.00001574
Balance of Payment	-8.251331569	0.01379631

According to the econometric theory, R^2 (R Square) is a summary measure that tells how well the sample regression line fits the data. An important property of R^2 is that it is a nondecreasing function of the number of explanatory variables or regressors present in the model; as the number of regressors increases, R^2 almost invariably increases and never

Taiwan (China), United Kingdom and US. In this study, the indicator of BOP is calculated as a rate between an economy's BOP and its GDP.

²⁸ The Durbin - Watson Test result of these three economic indicators is 2.123085.

decreases. Stated differently, an additional X variable will not decrease R^2 .²⁹ However, the adjusted R^2 is more popular in practice rather than R^2 , because adjusted R^2 tends to give an overly optimistic picture of the fit of the regression,, particularly when the number of explanatory variables is not very small compared with the number of observations.³⁰ In this empirical study, the adjusted R^2 is 0.7160, which means the independent variables in the equation can explain about 72 percent of the dependent variable. In other words, the three indicators have a tight relation with the formulation of maritime policy and a nation's maritime policy can be examined through the observation of these indicators.

P value, i.e, probability value, is known as the observed or exact level of significance and defined as the lowest significance level at which a null hypothesis can be rejected.³¹ The lower the *p value*, the higher the probability. The empirical results disclose that the economic indicators are significantly related to the national maritime policy. Among these three indicators, NSER is most significant to the maritime policy, with the *p value* = 0.00001574. BOP runs after the NSER and ranks the second significant indicator, with the *p value* = 0.01379631. Though the NCR ranks the third significant indicator to maritime policy, its *p value* (=0.02620883) is also very high and proves the significance of the NCR.

The regression results confirm not only the significant relation exists between each indicator and national maritime policy, but also the specific moving tendency between each indicator and the opening degree. The first coefficient (-0.280693158) explains that the NCR and the maritime policy are in an inverse ratio, which means that a nation with higher NCR will

²⁹ Gujarati, D. (2003), *Basic Econometrics*, 4th ed., McGraw – Hill., p. 217.

³⁰ Theil, H. (1978), *Introduction to Econometrics*, Prentice Hall, Englewood Cliffs, N. J., p. 135

³¹ *Supra* note 29 at 137.

have a relatively low score on the opening degree of maritime policy, i.e. adopt more liberalism maritime policy. This result corroborates the definition of NCR, higher NCR means the well development of national maritime industry, which may probably lead a *laissez faire* policy and *vice versa*.

The same situation applies to the indicator of BOP (coefficient = -8.251331569), namely, BOP and the maritime policy are also in an inverse ration. A nation with higher BOP rate indicates the healthy development of its international trade, and pursuant to the theory of international economics, this situation will affect the nation to pursue a liberal maritime policy.

While the coefficient of NSER (1.5512102053) illustrates the relation of direct ratio between a nation's NSER and its maritime policy, which means that the rising of NSER will possibly lead the nation more protective in formulation of maritime policy. The establishment of indicator NSER aims reflects the employment competency of seafarers and the relation between a nation's seafarer employment and its maritime policy. A nation with higher NSER means its national seafarers encounter a severe competence and such nation will possibly adopt protection measures to ensure the employment.

Combining the empirical results, the equitation of maritime policy becomes:

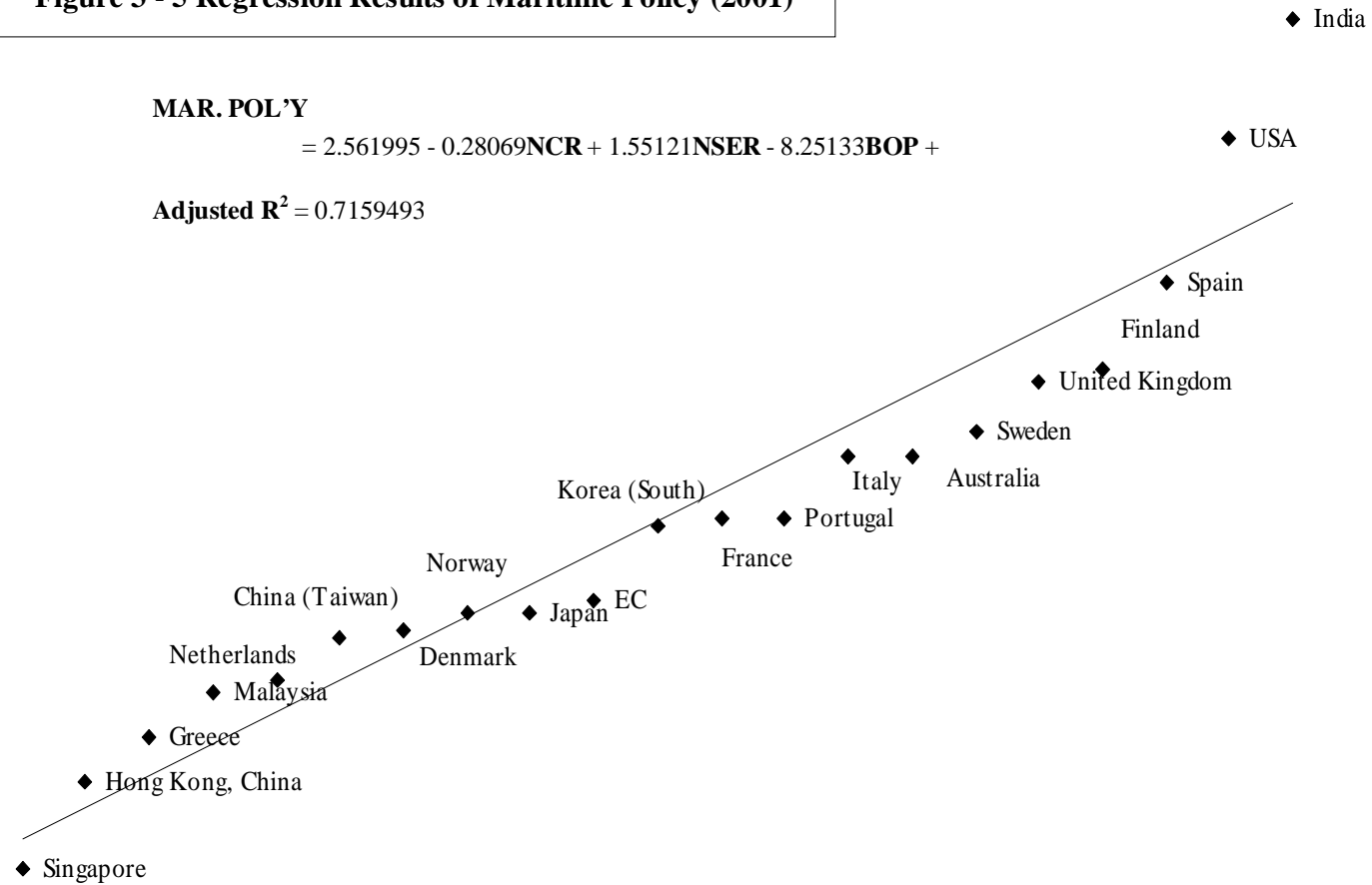
$$\mathbf{MAR. POL'Y} = 2.561995 - 0.28069\mathbf{NCR} + 1.55121\mathbf{NSER} - 8.25133\mathbf{BOP} + \quad (4)$$

Through the confirmation of the relation between three defined indicators and maritime policy, an alternative approach for observing national maritime policy is sculptured out. A

nation's maritime policy shall be predicted by examining the three indicators, namely, NCR, NSER, and BOP. On the other hand, a nation shall verify whether its maritime legal framework is adaptable to the development of its maritime industry as well as national economy. Figure 3-5 display both the actual and predicted maritime policy of the selected nations in year 2001. The trendline is the predicted maritime policy of these nations by applying the formula (4) and the scattered points are the actual maritime policy value by the index analysis. The points over the trendline indicate maritime policies of these nations tend to be more protective than developing situation of its maritime industry demands and *vice versa*.

But due to the insufficiency of data, a rigorous empirical examination of these indicators has been precluded. The empirical study only aims to indicate the possible relation between the maritime policy and the defined indicators.

Figure 3 - 5 Regression Results of Maritime Policy (2001)



3.8 Relation between Maritime Policies and Economic Foundation

As displayed in the Figure 3 – 5, the empirical results show that maritime policies practiced in the selected 22 maritime nations are affected by their economic indicators, and the trendline is the predicted optimum maritime policy for these nations. However, as this trendline is originated from the practices of these maritime nations, it may not be a mirror for optimum maritime policies of these nations. But, the empirical study illuminates the existence of an optimum maritime policy for a specific maritime nation, which means the maritime policy that are most appropriate for the development of national maritime industry.

The formulating process of national maritime policy is a dynamic and long period and affected by the attitude of legislators. For example, a nation may adopt liberalized maritime policy when a liberalist comes into power and *vice versa*. Nevertheless, the empirical study reveals that, observing from a long period, national maritime policy must move backward to be suitable for its economic foundation, as long as a nation desires to develop its national maritime industry. Therefore, the significance of the empirical study is that it points out the existence of such optimum maritime policy and expatiates how a nation may examine whether its maritime policy is adaptable to the development of national maritime industry by examining three economic indicators. This result shall make the formulation of national maritime policy more efficient.

3.9 Validation of Economic Indicators: A Case Study of the US

Due to the following reasons, the US is cited as an example to verify the regression model developed in previous sections. First of all, the US is a super economic power, as well as an important trading and maritime nation in the world, so its maritime policy has a substantial impact on other nations' maritime legislation. Secondly, the US is a major participant to the WTO negotiation, of which the maritime transport service negotiation is an important part, thus the US attitude towards maritime industry will affect the process of future WTO MTS negotiation. Thirdly, the US is also a significant counterpart to China and its maritime policy has an instructive effect upon China maritime legislation. Finally, to testify the defined economic indicators in a real context, the sample nation must have plenty of shipping data, which may make the case study more reliable. Above all, the US may be a proper example for the verification of the defined economic indicators, and the study on the US attitude and practice towards maritime industry will also benefit for further research on the WTO MTS negotiation.

The objectives of US maritime policy were originated in the Merchant Marine Act 1936, which states that:

‘It is necessary for the national defence and development of its foreign and domestic commerce that the US shall have a merchant marine

(a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping services on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times;

- (b) capable of serving as a naval and military auxiliary in time of war or national emergency;
- (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable;
- (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and
- (e) supplemented by efficient facilities for shipbuilding and ship repair.’³²

This 70-year-old statement determined the protectionist route for US maritime policy, and the US has followed this principle and adopted various measures to protect its domestic maritime industry ever since.

3.9.1 A General Review of the US Maritime Policy

During the course of the last 60 years, though the US has become the world’s largest trading nation, both the tonnage of the US – flag fleet and its carriage of US oceanborne trade (exports, imports and domestic water shipments) have shrunk. In 2003, the US – flag fleets carried only 16 percent of US oceanborne trade, which decreased about 60 percent comparing with the 1950s. Excluding domestic shipments, the share fell from 30 percent to only 2 percent.³³ The US adopted a protectionism route in maritime policy not only to maintain a certain scale of merchant fleets, but to ensure the employment of national seafarers as well as national security consideration. Regarding the security reasons, three military objectives are propounded: (1) having a commercial fleet that can

³² Section 101, Title I, Merchant Marine Act 1936.

³³ US Department of Transportation Maritime Administration (2004), *Maritime Administration Annual Report to Congress Fiscal Year 2004*, MARAD.

support the military in emergencies, (2) having a reserve fleet for the same purpose, and (3) having a ship building capability to supply new ships in wartime.

To obtain full governmental support, a merchant ship must meet a series of requirements to register in the US. If a ship desire to register under US – flag, it must be operated by an American company which is managed by and predominantly owned by US citizens. Pursuant to the report of the National Research Council, the US flag ship must operate under crews of 50 percent to 90 percent larger than those of other industrialized nations.³⁴ The support from the US government can be largely divided into two categories, i.e., cargo preference and financial support. Each one comprises several programmes to support the operation and maintain the numbers of US-flag vessels.

Cargo Preference Program

As stated in the previous paragraph, ships, which desire to register in the US, must meet rigorous requirements. These requirements obviously make the US-flag fleets endure higher construction, maintenance, environmental, and safety standards than their foreign-flag competitors, which surely incur high operation costs. Hence, the US government formulates a series of cargo preference programs to ensure the survival of its national flag ships.³⁵ The primary form of assistance to all US-flag vessel is provided through the cargo preference laws, which give economic incentives to US-flag shipowners. Since 1904, Congress has enacted a series of laws, which require exporters and importers to engage the US ships to transport a certain percentage of any oceanborne cargoes that are

³⁴ *Ibid.*

³⁵ For a general introduction of the US Cargo Preference Programme shall refer to the official website of MARAD., available at <http://www.marad.dot.gov/offices/cargo/>, (last visited August 1, 2006).

financed, directly or indirectly, by the US Government. These cargoes provide a base to help offset the higher costs to maintain ships under US registry.

Cargo Preference Act of 1954 requires that at least 50 percent of the gross tonnage of all Government-impelled cargo must be transported by US-flag commercial vessels to the extent such vessels are available at fair and reasonable rates.³⁶ The Food Security Act of 1985 amended the Merchant Marine Act of 1936 and raised the minimum requirement to 75 percent for certain agricultural cargoes. The Cargo Preference Act of 1954 also applies to the Strategic Petroleum Reserve. The Strategic Petroleum Reserve is the United States' emergency oil storage, and it is the largest emergency petroleum supply in the world. This program is managed by the Department of Energy, which requires US-flag tankers to transport at least 50 percent of the oil.³⁷

Pursuant to Department of Defense (DOD) regulations, cargo preference does not apply to subcontractors supplying commercial items when there is no value added and when ocean transportation is not the purpose of the contract. As a consequence, there may be no requirement for tonnage or revenue to be reported for some DOD shipments. There are three exceptions to this rule: (1) the contractor does not add value to the items; (2) the items are commissary or exchange items transported under specified conditions; or (3) the items shipped are in *direct* support of US military contingency operations or exercises or forces deployed in humanitarian or peace-keeping operations³⁸.

³⁶ 46 App. U.S.C. 1241(b).

³⁷ *Ibid.*

³⁸ *Supra* note 33.

Financial Support

Capital Construction Fund

As part of MARAD's commercial mobility strategic objective, operators have been assisted in accumulating capital to construct, acquire or reconstruct vessels through the deferral of Federal income taxes on certain deposits into their Capital Construction Fund (CCF) accounts. The CCF Program enables operators to construct vessels for the US-foreign trade, Great Lakes, and the noncontiguous domestic trade such as between the West Coast and Hawaii. It aids in the construction, reconstruction, or acquisition of a wide variety of vessels including containerships, tankers, bulk carriers, tugs, barges, supply vessels, ferries, and passenger vessels. During the fiscal year 2004, \$440 million was deposited into these accounts. Since the program was initiated in 1971, fund holders have deposited \$8.9 billion in CCF accounts and withdrawn \$6.3 billion for modernization and expansion of the US merchant marine. As of September 30, 2004, approximately 139 companies were parties to CCF agreements.³⁹

Construction Reserve Fund

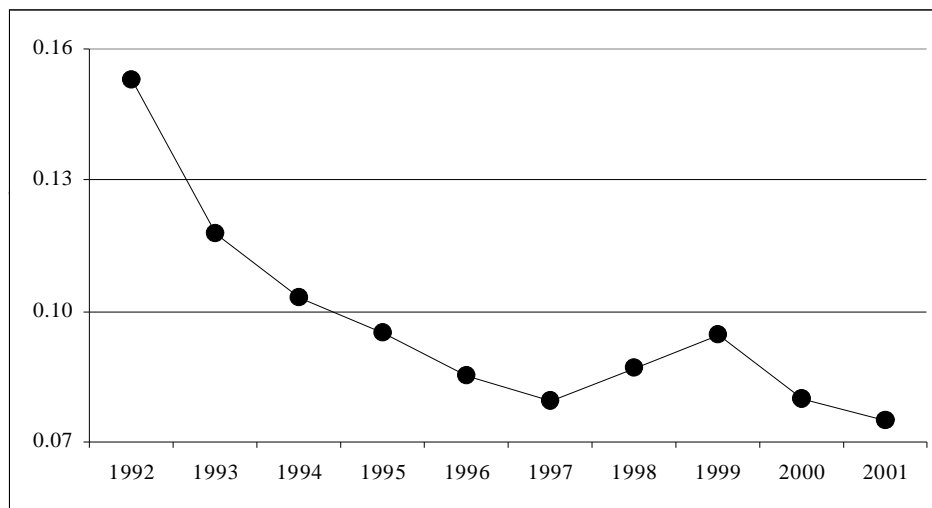
Like the CCF, the Construction Reserve Fund (CRF) supports MARAD's commercial mobility strategic objective by encouraging the upgrading of the American-flag fleet. The program allows eligible parties to defer taxation of capital gains on the sale or other disposition of a vessel if net proceeds are placed in a CRF account and reinvested in a new vessel within three years. There were 24 companies with active CRF balances during fiscal year 2004.

³⁹ *Supra* note 33.

3.9.2 The Indicator of the US NCR

High operating costs (crew wages) and the re-flagging of ships to open registry countries are the major reasons for the decline of the US national tonnage. In the year 2002, the NCR of the US was the lowest among the nine selected nations (see Figure 3-2), which reflects the inadequate development of its maritime industry. During the period 1994 to 2001, the waterborne trade volume of the US increased by 14 per cent, from 1,856 million tons to 2, 110 million tons.⁴⁰ However, at the same time, the deadweight tons of the US-controlled merchant fleet decreased from 22 million tons to 9 million tons, with the rate declining by about 59 per cent. Although the NCR of the US was already far lower than the WCR in 1992 (0.15), it continued declining from 1991 to 2001. (See Figure 3-6.)

Figure 3 - 6 US National Carriage Rate (1992-2001)



Sources: US Army, Corps of Engineers & ISL, Shipping Statistic Yearbook 1993-2002.

⁴⁰ U. S. Maritime Administration, US Waterborne Foreign, Databank; U. S. Army Corps of Engineers - Domestic Waterborne, available at <http://www.marad.dot.gov/>, (last visited August 1, 2006).

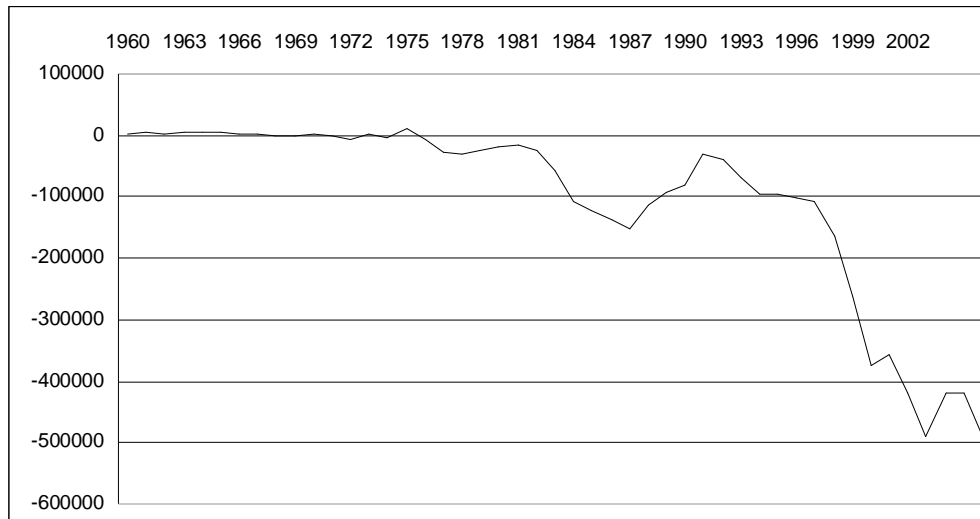
It is very odd that an increase in demand for waterborne transportation has not only failed to increase the US merchant fleet, but has resulted in a decrease. The serious competition in the maritime transportation market caused US-owned merchant vessels to switch flags in the ten-year period from 1992-2001, and its current capacity cannot satisfy the demands of the market. Concerning this status, the US government is discreet about the process of opening its maritime market.

3.9.3 The Indicator of the US Balance of Payments (BOP)

In line with the defined economic indicators, a key element that affects the US attitude in the negotiation is its national balance of payments situation. According to the statistics of the World Bank, only four out of thirty selected nations encountered a deficit in 2002. Of these four nations, the US had the most serious deficits, at about USD -480,859 million, while the deficits of Brazil, Turkey, and Australia were -7,696, -1,521 and -17,386 million US dollars respectively.⁴¹ In the period of 1960-1976, the BOP situation of the US was still close to a balance, but it has continuously declined in the successive 25 years to a serious deficit.

⁴¹ World Bank, World Development Indicators 2002.

Figure 3 - 7 US Balance of Payments (1960-2002) Millions of Dollars



Source: Bureau of Economic Analysis, US

Due to high production costs, the US becomes an importing nation, both of merchandise and services. Pursuant to classical theories of international economics, the US would adopt a protectionist approach in trade policies in the hope of eliminating its deficits. Regarding the liberalization of its MTS market, the US takes a conservative route about whether such action will substantially harm its domestic industry and aggravate the situation of deficit.

3.9.4 The Indicator of the US NSER

Because of the sharp decline in national merchandise tonnage from nearly 40% of the world's tonnage in the 1940s to barely 2% in the 2000s, the US maritime employment has then kept declining in the last five decades.⁴² To protect national employment, the US

⁴² Bureau of Transportation Statistics US., *National Transportation Statistics 2003*.

law requires that all national fleets must be crewed by its citizens.⁴³ According to information reported by the Bureau of Transportation Statistics, in terms of waterway employment, the situation in the US had relatively remained stable during the period 1970-1999, i.e. 419,100 in 1970 and 361,936 in 1999,⁴⁴ which is attributable to the protectionist maritime policies practiced by the government. If the US made concessions to the WTO on maritime transport services, foreign service providers would be allowed to enter its domestic market, and then national providers would be forced to change their jobs and 'bear real costs that they are likely to resist'.⁴⁵ Public choice theory protests that these providers would support those politicians who protect their industry and penalize those who do not. Therefore, US politicians would be very sensitive about the issue on altering the national maritime policies.

3.9.5 Indicator of the US National Security

The US Congress has repeatedly affirmed its intention of promoting national merchant marine industry by passing cargo preference legislation in response to a general downturn in this industry.⁴⁶ These laws are intended to ensure that the US has a sufficient merchant fleet to provide a naval auxiliary in times of war or national emergency and to participate substantially in the carriage of foreign and domestic commerce. It proves that the US merchant fleet not only engages in international trade, but carries out military duties in times of need.

⁴³ Ferguson, A. R. *Reform on Maritime policy: Building blocks of an Integrated Program*, <https://www.cato.org/pubs/regulation/regv17n2/reg17n2-ferguson.html>, (visited 1 March 2006).

⁴⁴ *Supra* note 42.

⁴⁵ *Supra* note 6 at 312.

⁴⁶ Available at <http://ntl.bts.gov/DOCS/rc9534.html>, (last visited August 1, 2006). The cargo preference legislation in effect today include the Cargo Preference Act of 1904; and the Merchant Marine Act of 1936, which was amended by the Cargo Preference Act of 1954.

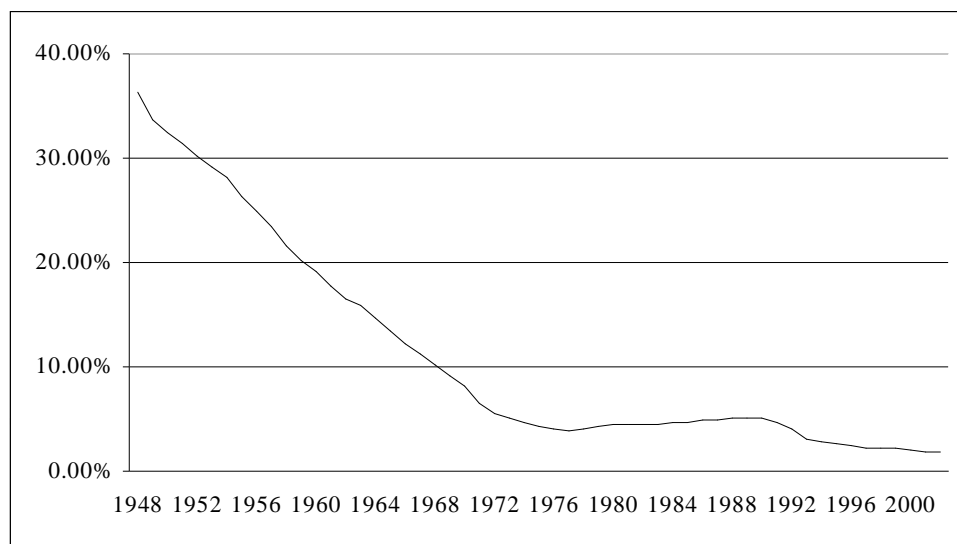
The most important programme maintained by the MARAD is the *National Defense Reserve Fleet* (NDRF), which contains vessels that can be activated to support cargo movement requirements during national emergencies. The NDRF program was started after World War II, when the Merchant Ships Sales Act of 1946 was enacted as the primary component of the NDRF, *Ready Reserve Force* (RRF) was initiated on 14 February 1977 as the MARAD's premier sealift program to support the rapid worldwide deployment of U.S. military forces. MARAD maintains the RRF, a fleet of militarily-use ships, in a reserve status in the event that the DOD needs them to support the rapid, massive movement of military unit equipment and supplies and troops for a military exercise or large scale conflict. The ships are managed by commercial companies selected by MARAD, and crewed by civilian merchant mariners for the security consideration. Most of the RRF ships activated for the conflict in the Middle East have been kept in reduced operating status, with partial crews keeping the ships in good repair and ready for activation.

In the 2003 Iraq War, RRF engaged in 68⁴⁷ sealifts of supplies for the US military. The RRF supplements the Maritime Prepositioning Programme, which has strategically located ships pre-loaded with Army or Marine Corps equipment. The former commercial vessels of the RRF should sit empty while awaiting a call-up. Under the programme, the ships must be ready for loading and sailing within 4, 5, 10, or 20 days. Those assigned a readiness of 4 and 5 days have a permanent skeleton crew of 9 or 10 mariners. This shows the significant position of merchant vessels in times of emergency.

⁴⁷ US Department of Defense, <http://www.usmm.org/rrf.htm>, (last visited August 1, 2006).

Notwithstanding its important role to the state, since World War II the US-flagged fleet has continuously decreased both in gross tonnage and in its proportion of the world fleet. Compared to the year 1948, the gross tonnage of US-flagged vessels has declined by about 65 per cent. Its proportion of the world fleet has also declined from 36% in 1948 to 2% in 2002.⁴⁸ But in the last ten years, the US's share of world trade has fluctuated mildly and preserved the largest proportion of the world, with imports accounting for about 16 per cent and exports about 12 per cent.⁴⁹ This situation implies that the development of US maritime industry cannot keep pace with its international trade.

Figure 3 - 8 Percentage of US Tonnage in World Tonnage (1948-2002)



Source: Lloyd's Register of Shipping 'World Fleet Statistics' (Annually)

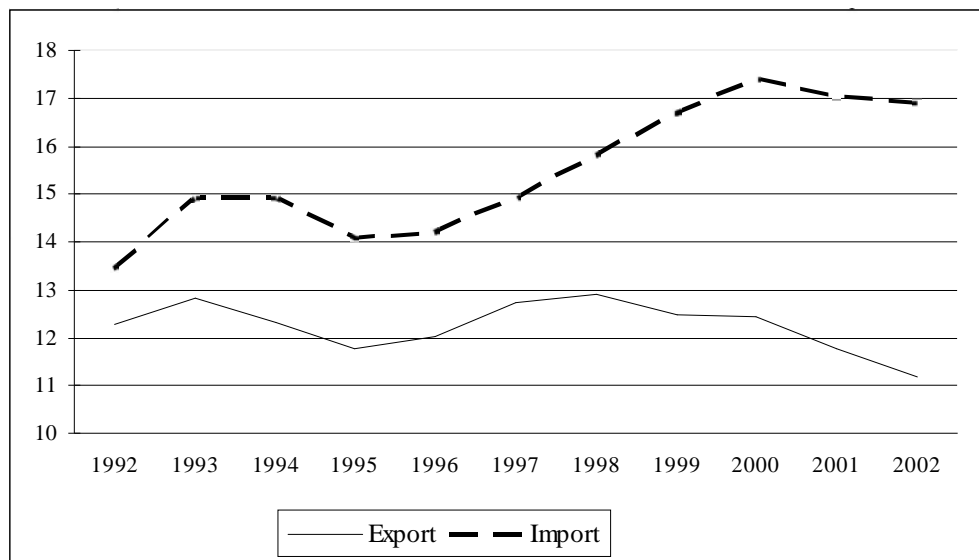
As estimated by the US General Accounting Office, if the US government removed the subsidies for its national flag merchant vessels, two-thirds of these vessels would

⁴⁸ Lloyd's Register of Shipping, *World Fleet Statistics*.

⁴⁹ International Monetary Fund, *Direction of Trade*.

probably reflag to another nation.⁵⁰ This would not only have a negative impact on the US maritime industry, but, most importantly, lead to an insufficient number of merchant ships being available in emergent times.

Figure 3 - 9 US Share of World Trade 1992-2002



Source: IMF's Direction of Trade.

The latter half of the 20th century has witnessed the transformation of the US maritime industry, from prosperity to recession. Testifying the economic indicators to US maritime policy explains the reason why it has adopted a protectionist maritime policy. The elementary criterion to scale a nation's maritime industry is the capacity of its flag merchant vessels, where the US declined from the most powerful maritime nation after World War Two (controlling about 40% world's fleet in tonnage) to a common one. On the other hand, the demand of national security requires the US to maintain a stable

⁵⁰ Available at <http://ntl.bts.gov/DOCS/rc9534.html>, (last visited August 1, 2006).

number of ships flying the national flag; otherwise, the number of auxiliary vessels available would be inadequate in case of war or national emergency.

3.10 Summary

The intension and extension of maritime policy are too comprehensive to define its determinants, which determine the formulation of national maritime policy. But through the empirical analysis between the maritime policy and defined economic indicators, a close relation has been disclosed. This relation shall be expressed as maritime laws and policies are determined by economic structure of national maritime industry and influence the development of maritime industry. The empirical results manifest that a nation with lower NCR, higher NSER, and serious deficit in BOP, usually takes a relatively protective way in maritime policy, and *vice versa*. Hence, to some extent, it shall review the general situation of a nation's maritime policy, i.e. liberalism or protectionism, by examining these three indicators, which are more intuitionistic and observable.

It is not easy to ensure that either protectionism or liberalism is adaptable to the development of national maritime industry, due to the different historical, economical, political, and geographical conditions of different nations. In fact, liberalism or protectionism is not an either-or question and there would be an optimum way for national maritime policy making. Different nations at different development stages under different conditions should or would impose a different maritime policy. Such maritime

policy shall be regarded as an optimum maritime policy for a specific nation at a specific developing stage.

The 60 years after the World War II had witnessed the transformation of the US maritime industry, from prosperity to recession, which makes the US a good example for the validation of these economic indicators. Applying the economic indicators of national maritime policy to the case of the US has quantified this trend and helped to explain why the nation has adopted a protectionist maritime policy.

An important criterion defined by this research is the NCR, which reflects the capacity of a nation's maritime transportation against the volume of its waterborne trade. Although the NCR of the US in 1992 was already much lower than the WCR, it kept declining in the successive 10 years. During the same period, the foreign trade volume of the US fluctuated mildly, which means that more and more cargo was transported by vessels flying foreign flags. On the other hand, the demand for national security requires that the US maintain a stable number of ships flying the national flag; otherwise, the number of auxiliary vessels available would be inadequate in case of war or national emergency.

The US case study gives a logical ground to practice a protectionist maritime policy to support its national flag vessels and paves the way for further exploration upon the WTO MTS negotiation in the following Chapter. In accordance with the defined economic indicators, the situation of a nation's NCR, NSER and BOP shall disclose its inclination of maritime policy. In the past about 60 years, the US has endured a decreasing NCR and

serious deficit in the BOP. Although its seafarer employment maintains stably during this course, the lower NCR and BOP corroborate both the protectionism route of the US maritime policy and effectiveness of the defined indicators. Without indispensable support to national flag merchant fleets, the US – flag vessels would logically confront a mass flag-out, which is not only in breach of the developing objectives of the US maritime industry, but leads the inadequate number of national flag vessels in time of emergency.

On the other hand, due to lack of recognition, data statistics on national waterborne trade and seafarer employment are insufficient both in availability and standard. For example, some nations calculate their waterborne cargoes in term of metric tonnage, while some are in term of short tonnage, and some nations even do not have such statistics. Regarding importance of these indicators, more recognition and statistics work are expected to be devoted to justify the empirical study. This research also expects to arouse interests of maritime nations as well as international organizations in these indicators and make relevant maritime data available in the future. With sufficient data in the maritime industry, the relation between national maritime policy and its economic development shall be comprehensively examined.

CHAPTER 4

INTERNATIONAL MARITIME POLICY:

WTO MTS NEGOTIATION

Basing on the evolutionary review of the WTO MTS negotiation in the Chapter 2 and the theoretical relation between the maritime policy making and economic basis established in the Chapter 3, this Chapter enumerates common measures for maritime protectionism and maps out the opening degree of selected maritime nations in the context of the WTO by application of index method. Based on the results of examinations and analysis in previous Chapters, alternative strategies are proposed with the aim to solve the 20-year stagnation in the WTO MTS negotiation.

4.1 Introduction

The unification of maritime regulatory framework has always been an important objective in the international law, from the Rhodian Sea Law to modern-day efforts and activities represented by the Comité Maritime International, the International Maritime Organization, the International Labor Organization, and other United Nations organizations. Having recognized the importance of maritime services for international trade, members of the World Trade Organization have, for 20 years, endeavored to embody maritime industry into WTO legal framework. Dozens of meetings have been organized by the Negotiating Group

on Maritime Transport Services since the Uruguay Round and 48 members (which represent 73 member states) have already made conditional commitments on maritime services.¹

The NGMTS was created subsequent to the failure to reach an agreement on maritime services in the Uruguay Round, with the objective to conclude negotiations "... aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time-scale."² by June 1996. In its initial phase, the NGMTS produced a three-pillar model schedule on maritime transport, which is reviewed in the Chapter 2, and commitments with regard to the four modes of delivery³. The model, however, was established for about twenty years and during this course, the maritime industry developed remarkably. Therefore, the model is, to some extent, out of date and ought to be reconsidered.

This Chapter reviews various kinds of protection measures, which are divided into two groups, i.e. restrictive measure and support measure, adopted by main maritime nations within the framework of the WTO. Preferential analysis and index method are applied to describe and measure the opening degree of maritime policies adopted by top 30 maritime nations, which are at the same time WTO members. The results disclose the huge gap

¹ WTO Maritime Transport Services, Background Note by the Secretariat, S/C/W/62, 16 November 1998 and S/CSS/W/106, 4 October 2001. This information can also be found in the Ministry of Trade and Industry Norway, Developments at the WTO Negotiation on Maritime Transport Services, OECD Workshop on Maritime Transport, 4-5 November 2004. The historical review upon the WTO NGMTS meetings is discussed in the second Chapter.

² WTO, Decision on Negotiations on Maritime Transport Services, June 1996.

³ These four modes of delivery include A. from the territory of one Member into the territory of any other Member (Mode 1 - Cross-border trade); B. in the territory of one Member to the service consumer of any other Member (Mode 2 – Consumption abroad); C. by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3 - Commercial presence); and D. by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode 4 - Presence of natural persons). *See* GATS.

between the US and the other participants, represented by Australia, Canada, China, the EC, India, Japan, and the Republic of Korea, in both their conditional commitments to the negotiation and trade practices. The former is far away from fulfilling WTO requirements, while the later is closer to the scheme. This result supports the argument that the predominant cause for the 20-year stagnation in the WTO maritime negotiation is the inactive attitude of the US. If the primary economic indicators, which affect the inclination of US maritime policy, did not change or improve in the predictable future, the US would be unlikely to make any substantial concessions in the WTO Maritime Transport Services Negotiation. A logical alternative approach for other major players, i.e., Australia, Canada, China, the EC, India, Japan, and the Republic of Korea, may consider going ahead and reaching an agreement without the participation of the US. Legal and technical analyzes are carried out on the feasibility of this alternative strategy. The study proves that the alternative strategy is permissible under WTO rules and international law, and that it is practically as well as technically possible.

From the technical aspect, the three-pillar model, i.e., 1) maritime transport services, 2) maritime auxiliary services, and 3) port services, adopted by the WTO also contributes substantially to the stagnation of the negotiation. To make progress in any pillar, members have to reach agreement in all of the sub-sectors under it. Slight discrepancies among members upon one sub-sector will prevent members from reaching a whole pillar-agreement. Based on a thorough review of the negotiation framework and of the members' commitments in each sub-sector, a new strategy is proposed to replace the three-pillar approach. The examination on current commitments provided by member states indicate that some sub-sectors received a high agreement, while others do not. These highly agreed sub-

sectors can be re-grouped into a new package and given higher priority for future negotiation, while those sub-sectors with lower agreement can be set aside for further study and consideration.

4.2 Restrictive Measures

As introduced in previous chapters, the indices⁴ of the opening degrees are divided into two dimensions, i.e., restrictive measures and support measures, by which each maritime nation will be fixed in the Cartesian coordinates. Restrictive measures refer to measures that prevent foreign enterprises from entering or participating in the domestic maritime transport services market; while support measures refer to policies that encourage and strengthen the competitive ability of domestic enterprises by providing favorable treatments. Both restrictive measures and support measures consist of several specific measures and it aims to quantify national maritime policy by mapping the selected nations' preferred positions in an index chart.

Restrictive measures are those that prevent foreign maritime service providers from entering or operating in a market, which have been imposed by governments through legislation and regulation. In practice, selected nations adopt various kinds of measures to realize this objective, e.g., market access, local content⁵ and mandatory measures.

⁴ The scoring systems of the indices are illustrated in the Chapter 3 in detail.

⁵ These terms follow the WTO classification and definitions.

4.2.1 Requirements for Market Access

This refers to the openness of a national market to foreign products and also reflects a government's willingness to permit imports to compete in a relatively unimpeded manner with similar domestically produced goods.⁶ In order to protect a national MTS industry, many countries place quotas or limitations on the number or scope of foreign providers through licensing requirements or the requirement for an economic needs test, or on the total value of maritime transport service transactions.

For example, in the Philippines, to engage in maritime transport service, a provider must be accredited by the competent authorities; e.g., the *Maritime Industry Authority* for maritime business and overseas shipping, the *Philippine Shippers' Bureau* for freight forwarding, break bulk agents, cargo consolidation, and non-vessel operating common carriers, and the *Philippine Overseas Employment Administration* for manning/crewing agents.⁷

The Canadian government requires non-Canadian citizens to get approval to acquire control of a Canadian transport business in:

1. All direct acquisitions of Canadian businesses with assets of \$C5 million or more;
2. All indirect acquisitions of Canadian businesses with assets of \$C50 million or more;

or

⁶ Hinkelman E.G. (2002), *Dictionary of International Trade* 5th ed., World Trade Press, p. 131.

⁷ S/NGMTS/W/2/Add.24, 5 April 1995, p. 5.

3. Indirect acquisitions of Canadian businesses with assets of between \$C5 million and \$C50 million that represent more than 50% of the value of the total international transaction.⁸

Japan requires foreign suppliers to apply for permission to engage in port services, with the following requirements to be examined before approval:

1. the commencement of the business shall not cause oversupply of the port transportation services;
2. the applicant has such facilities and labor as prescribed in a Ministry of Transport Ordinance;
3. the business plan is appropriate to conduct the business;
4. the scope of the responsibility of the person who carries out the business is clear;
5. the business has a sound financial base.⁹

The Indonesian government forbids foreign maritime companies to lease, own, or operate terminals. The operation of terminal can only be carried out by a stevedoring company of an Indonesian corporate body.¹⁰

4.2.2 Requirements for Local Content

Besides restrictions on the entry of foreign suppliers, most nations also have requirements for local content, which refers to measures on the limitation of personnel, i.e., the

⁸ Available at <http://www.apec-tpwtg.org.tw/TPT/tpt-main/Publications/TEQ/assorted-response-to-teq.htm>, (last visited August 1, 2006) at 37.

⁹ S/NGMTS/W/2/Add.3, 20 January 1995, pp. 3-4.

¹⁰ *Supra* note 8 at 45.

requirement to employ domestic seafarers or other staff. Limitation can be also placed on the existence of commercial enterprises, including restrictions on the establishment of institutions by foreign transportation or auxiliary enterprises, restrictions on the proportion of foreign capital and existing forms.

The common rule on local employment requires domestic seafarers or employees to make up at least the dominant proportion of the whole staff. For example, in Italy, access to the regulated profession of ship's agent is subject to the condition of EC nationality.¹¹ The Turkish government requires at least 60 per cent of the crew of Turkish-flagged ships to be made up of local seafarers, while the ships engaged in cabotage shipping shall not employ foreign seamen.¹² According to Article 178 of Brazil Federal Constitution, the captain and two-thirds of the crew on board Brazilian-flagged ships must be Brazilians.¹³ The objective of this measure is to ensure the employment opportunities for national citizens on the one hand and to protect domestic industry on the other.

Commercial existence requirements and equity ceilings are the other common methods to protect the local MTS industry. For example, Malaysia only allows foreign suppliers to engage in shipping agents through the form of a joint venture with a 70% ceiling for foreign capital.¹⁴ In South Korea, a joint venture or a company with 100% foreign ownership rendering maritime agency services, maritime freight forwarding services, shipping

¹¹ S/NGMTS/W/2/Add.12, 17 February 1995, p. 38.

¹² S/NGMTS/W/2/Add.23/Rev.1, 25 September 1995, p. 6.

¹³ S/NGMTS/W/2/Add.34, 18 July 1995, p. 5.

¹⁴ S/NGMTS/W/Add.19, 13 March 1995, p. 4.

brokerage services, or vessel maintenance and repair services must be incorporated as a joint stock company.¹⁵

4.2.3 Principle of Reciprocity

Black's Law Dictionary defines this principle as: 1) mutual or bilateral actions; or 2) mutual concessions of advantages or privileges for the purpose of commercial or diplomatic relations.¹⁶ South Korea permits only companies of nations that do not discriminate against Korean-flagged vessels to engage in inland trucking business. Pursuant to Japan's Freight Forwarding Business Law, an operating permit or governmental registration for international freight forwarding services is granted only to firms of nations in which Japanese firms are eligible for such a permit or qualified for such a registration.¹⁷

4.2.4 Mandatory Requirements

It is found that most of the reviewed nations have mandatory requirements for foreign-flagged vessels in using some port services, especially pilotage as well as towing and tug assistance. Other services including navigational aids, garbage collection, and ballast waste are also mandatory in some nations. Nations having such requirements include Australia, Brazil, Canada, China, the EC, Japan, South Korea, Norway, Hong Kong, Indonesia, Malaysia, Singapore, and the US.

¹⁵ S/NGMTS/W/Add.7, 1 February 1995, p. 5.

¹⁶ Garner B. A. (ed. 1999), *Black's Law Dictionary*, 7th edition, West Group St. Paul, Minn., p. 1276.

¹⁷ *Supra* note 9 at 6.

4.2.5 Discriminatory Measures

Discriminatory measures have also been taken by a few nations. For example, Brazil applies a lighthouse fee only to vessels carrying foreign flags.¹⁸ The US restricts some nations from entering certain ports, territorial sea areas, and internal waters in general. The restricted nations include Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, and Vietnam. Vessels from restricted nations must submit either specified 3-day advance notice or 7-day request based on which of the 12 controlled ports the vessel is planning to enter.¹⁹ Vessels from the following nations are prohibited from entering US ports and the territorial waters. The prohibited countries include Cambodia, Cuba, Iran, Iraq, Libya, the People's Republic of Korea (North Korea), and Syria.²⁰

4.3 Support Measures

This term refers to measures and policies initiated by governments to help their national firms gain competitive advantages over foreign providers. European Union defines support measures as 'the broadest group of public and semi-public support actions, and to indirect support provided by grants, programmes and tax incentives intended to support businesses',²¹ which include subsidies, cargo reservations, tax and fee preferences.

¹⁸ *Supra* note 13 at 6.

¹⁹ *Supra* note 8 at 45.

²⁰ *Supra* note 8.

²¹ Available at <http://europa.eu.int/comm/enterprise/smie/faq.cfm#what>, (last visited August 1, 2006).

4.3.1 Subsidies

The definition of subsidy is ‘a financial contribution, income or price support by a government or any public body within its territory.’²²

In 1996, the US promulgated the Maritime Security Act and established the Maritime Security Programme (‘MSP’) to replace the Operating Differential Subsidy (‘ODS’) for liner operators. The MSP has already been authorized through fiscal year 2005 and provides \$100 million annually, subject to annual congressional appropriations. Generally, this programme supports 47 ships in international trade at a cap of \$2.1 million per ship per year.

As of May 1, 2001, twelve US-flagged carriers received MSP payments.²³ The fleet of vessels enrolled will be expanded and the amount of money allotted for each vessel in the Maritime Security Fleet will be increased. Under the MSP renewal provision in the National Defense Authorization Act for fiscal year 2004, the number of vessels allowed to participate will increase from 47 to 60 beginning in fiscal year 2006. The allotments for each vessel over the life of the programme will also increase as follows:

- \$2.6 million per vessel per year during fiscal years 2006-2008
- \$2.9 million per vessel per year during 2009- 2011
- \$3.1 million per vessel per year during 2012-2015.²⁴

This proves the steady intention of the US government to support its own international maritime industry.

²² Art. 1, *Agreement on Subsidies and Countervailing Measures*.

²³ US Department of Transportation (2002), *Maritime Trade & Transportation* 67, available at http://www.bts.gov/publications/maritime_trade_and_transportation/2002/index.html, (last visited August 1, 2006).

²⁴ American Maritime Officer, available at <http://www.amo-union.org/Newspaper/Morgue/12-2003/Sections/News/msp.htm>, (last visited August 1, 2006).

In Australia, national shipbuilders are eligible for a construction bounty of 3% on eligible costs for the construction or modification of vessels greater than 150 but no more than 20,000 gross construction tons. Australia also provided a Shipbuilding Innovation Scheme to encourage research and development (R&D) in the shipbuilding industry. Under this scheme, governmental support consisted of a 50% subsidy on R&D expenditure up to a maximum of 2% of a company's eligible costs incurred in the production of a bountiable vessel manufactured during the period 1 July 1999 and 30 June 2004.²⁵

Two Canadian provinces have also provided construction subsidies to national operators. Quebec offers a provincial tax credit on the first four ships in a series built in its territory. These are paid to the shipowner if he resides in Quebec or to the shipyard if the shipowner resides outside of Quebec. The subsidy is 40% of the labor cost up to a maximum of 20% of the cost of the ship for the first ship, and decreases for the three subsequent ships. Quebec also offers a reduction in the provincial capital tax for Quebec-built ships owned by local companies and operating in the international shipping market. Nova Scotia is the other province that has established an Offshore Supply Vessel Programme, offering a loan guarantee of up to 87.5% of the cost for ships built in Nova Scotia. The cumulative maximum guarantee for the programme is CDN\$80 million, and guarantees are available for up to 15 years. The programme does not involve any provincial subsidies, direct grants, or tax credits.²⁶

²⁵*Supra* note 8 at 48.

²⁶*Supra* note 8.

4.3.2 Cargo Reservations

This refers to ‘the reservation for transportation on national flag vessels, of all or a portion of all oceanborne cargo which moves in international trade either as a direct result of the government’s involvement or indirectly because of the financial sponsorship of a programme or guarantee provided by the government’.²⁷ And in this research, only measures that are currently practiced will be evaluated in the indices. For example, China used to require domestic trading companies to conclude import contracts on FOB terms and export contracts on CIF terms, thus reserving cargoes to national flag vessels. But this measure was abolished in 1988 and so it has been excluded from the index analysis.²⁸

The US Cargo Preference Act of 1904 requires that military cargoes be shipped exclusively on vessels of the US or belonging to the US. It does not mandate the use of privately owned, US-flagged commercial vessels. However, the Cargo Preference Act of 1954 requires that 50 per cent of such military cargoes be shipped on privately owned United States-flagged commercial vessels. The Food Security Act of 1985 amended the Cargo Preference Act of 1954, in order to increase the minimum US flag requirement from 50 to 75 per cent for shipments of agricultural cargoes under certain foreign assistance programmes of the US Department of Agriculture and the Agency for International Development. The US Congressional Budget Office has estimated that eliminating this expense would lower federal transportation costs by allowing the government to ship its cargo at the lowest

²⁷ 46 USC. 1241(b), US Cargo Preference Act of 1954.

²⁸ Ministry of Communications (2000), *Report on China Shipping 1999*, People’s Communications Press.

available rates – saving USD\$243 million in outlays in 2004 and nearly \$2 billion over five years.²⁹

In a report by the US General Accounting Office, it was estimated that without preference cargo, up to two-thirds of the US-flagged vessels engaged in international trade would leave the fleet, with most either shutting down or reflagging to another country to save costs.³⁰ This would not only have a direct impact on opportunities for shipboard jobs, but on national security as well, because US merchant fleets also have the duty to act as naval auxiliaries in times of war or national emergency.

The Philippine government also applies cargo reservation measures to its maritime transport services field. According to Presidential Decree No. 1466, the transportation of persons or export or import cargoes by water between the Philippines and another country which have been procured, contracted for, or obtained by any government office, agency or instrumentality, including all government-owned or controlled corporations or the payment for which cargoes is made from funds of the government or such instrumentality or corporation must make use of the Philippine-flagged vessels (or carriers). Whenever import or export cargoes and/or their transportation is to be paid from the proceeds of loans, credits, or obligations guaranteed by the government or any of its financial institutions, such cargoes and/or transportation must utilize Philippine-flagged vessels.³¹

²⁹ Congressional Budget Office, *available at* <http://www.cbo.gov/showdoc.cfm?index=6075&sequence=18>, (last visited August 1, 2006).

³⁰ *Available at* <http://ntl.bts.gov/DOCS/rc9534.html>, (last visited August 1, 2006).

³¹ *Spura note 8 at 40.*

4.3.3 Tax Preferences

Tax preference includes any preferential tax rates afforded to an industry. Pursuant to the *Merchant Marine Act of 1936*, US citizens owning or leasing eligible vessels may obtain tax benefits through the maintenance of Capital Construction Funds ('CCF') and Construction Reserve Funds ('CRF') to construct qualified vessels.

The CCF programme is a method of helping operators of US vessels to accumulate the capital necessary for the construction, reconstruction, and acquisition of vessels of US registry constructed in the United States. The purpose of the programme is to remove the competitive disadvantages that US operators are under relative to foreign flag operators. The CCF extends tax-deferral privileges to vessel operators engaged in US-foreign commerce, Great Lakes, noncontiguous-domestic trade, and the fisheries of the United States.³² As of March 2003, there were a total of 126 active individual and consolidated CCF Agreements, with reported cumulative deposits since the inception of the programme in excess of \$2 billion to accomplish construction and acquisition programmes.³³

The CRF is also a financial-assistance programme that provides tax-deferral benefits to US shipowners. Through the CRF, shipowners operating vessels engaged in the foreign or domestic commerce of the US can defer the gain attributable to the sale or loss of a vessel. The proceeds deposited must be used to construct, reconstruct, or acquire vessels of US registry constructed in the United States. Although any gains on such transactions are not

³² *Supra* note 8 at 50.

³³ Available at <http://www.cfda.gov/public/viewprog.asp?progid=659>, (last visited August 1, 2006).

recognized for income tax purposes if the deposits are properly expended for a vessel, the basis for determining the depreciation of such a vessel is reduced by the amount of any such gains.³⁴ According to official statistics, as of March 2003 there were 23 construction reserve fund contracts with deposits totaling approximately \$21,300,000 for the construction, reconstruction, and acquisition of the proposed programmes.³⁵ Such preferential treatment can stimulate national operators to construct, reconstruct, recondition, or acquire merchant vessels built and documented in the US. This will no doubt have a great effect on US national defense and the development of the US economy.

4.3.4 Fee Preferences

This measure consists of any preferential fees or charges that are levied on domestic services suppliers or national flag vessels. For example, China provided preferential port charges to national flag vessels before 1992, giving vessels flying the national a rebate of up to 50 per cent of the standard charge. But this measure was abolished in 1992 and 1997 with the issuance by the Ministry of Communications of the Rules on Port Charges, which governs both national and international trade.³⁶ Pursuant to these rules, port charges in China became based on the character of trade (national or international) rather than on the nationality of the vessel.³⁷ This kind of measure does not currently prevail in maritime nations.

³⁴ *Supra* note 8 at 50.

³⁵ Available at <http://www.cfda.gov/public/viewprog.asp?progid=661>, (last visited August 1, 2006).

³⁶ *Supra* note 28.

³⁷ K. X. Li, Cullinane, K., Hong Yan and Cheng Jin (2005, *Maritime Policy in China after WTO: Impacts and Implications to Foreign Investment*, Journal of Maritime Law and Commerce 36(1), pp. 77 -139.

4.3.5 Service Preferences

Service preferences refer to those measures that provide maritime services on a preferential basis to national flag vessels; for example, vessels flying the Japanese flag used to enjoy prior berthing services at their domestic ports.³⁸

4.4 Results of the Index Analysis

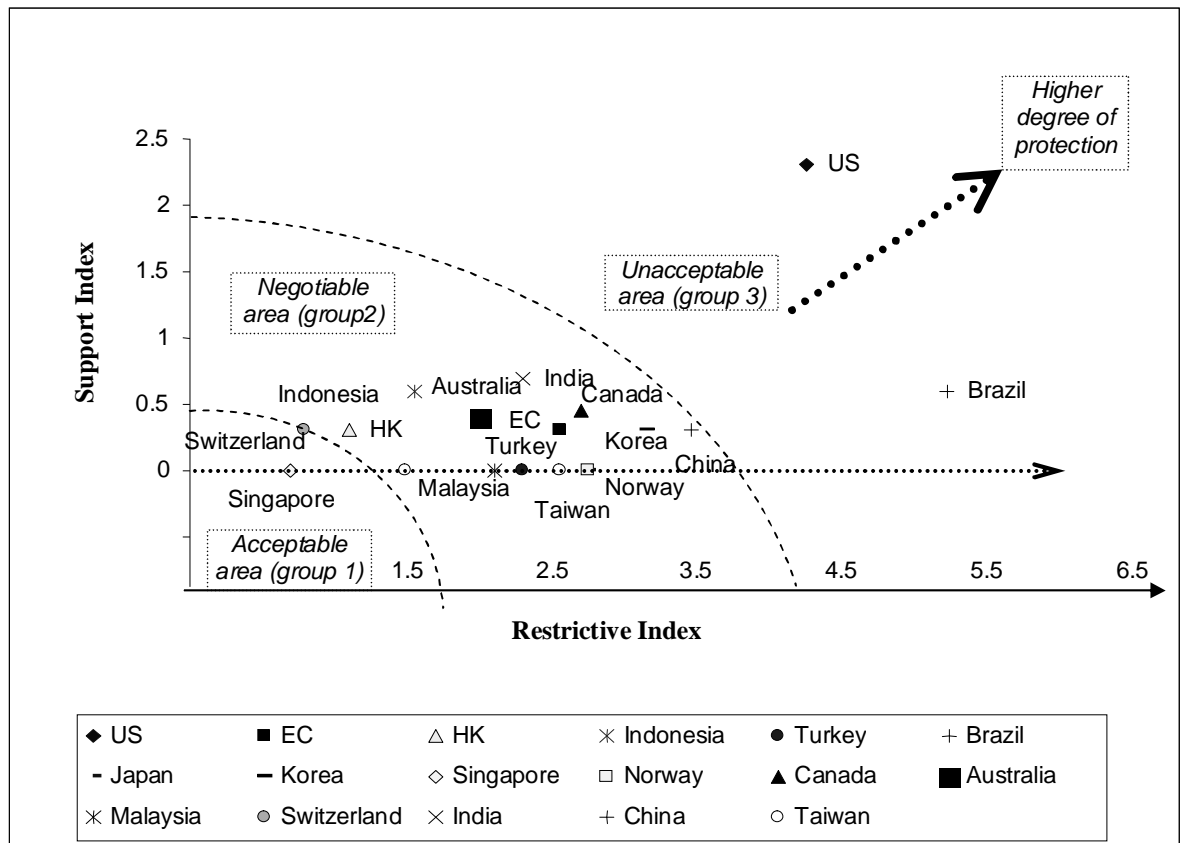
Pursuant to the index method, two indices – 1) support index and, 2) restrictive index – have been established on the data and method discussed in previous Chapters. Support Index describes the degree of national supports (subsidies) to its national maritime industry, while Restrictive Index reflects the restrictions imposed on foreign companies entering into a national market. The results of the index analysis on the maritime policy of selected nations shall be illustrated as Figure 4-1.

In accordance with the general principles of the WTO, the analytical results of the index method clearly reveal that the selected maritime nations are nicely clustered into three groups – 1) Acceptable Group, 2) Negotiable Group, and 3) Unacceptable Group.

³⁸ Xiao, L. (2001), *On International Shipping Investment Law*, Shanghai Maritime University dissertation.

*Because these two measures (fee preferences and service preferences) are not common, they are not quantified in the index analysis.

Figure 4 - 1 Cross-nation Comparison on Maritime Policy



Subject to the available data, Switzerland and Singapore, which fall into the Acceptable Group, practice the most liberalism maritime policies for maritime industries and already meet the anticipant standard of the WTO as well as the MTS framework.

Most selected nations are scattered within the scope of negotiable area, which is close to the WTO requirements, but efforts should be made to reach WTO standards. Members in the Negotiable Group include Australia, Canada, China, the EC, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Norway, Taiwan, and Turkey. During the MTS negotiation,

participants of this group generally take the same position, which provides possibility for further development.

Brazil and the US are in the Unacceptable Group, whose policy practices are far from the WTO requirements. According to the analysis in the Chapter 3, the US adopts a protectionism maritime policy for more than 50 years and its economic indicators reveal that the US Government is hard to make any substantial change.

As the Acceptable Group has already fallen into the policy scheme of the WTO, the MTS negotiation will lightly affect the maritime practices of those nations in this group. Therefore the Negotiable and Unacceptable Group then become the two key players of the negotiation, and the focal point of the MTS negotiation shifts to whether these two groups can reach an agreement. In other words, the main concentration of the MTS negotiation goes to whether the nations in the Unacceptable Group can afford to liberalize their maritime industry and become acceptable to the Negotiable Group, as well as fulfill the requirements of the WTO. If the participants in MTS negotiation expect to make progress in the negotiation, the Unacceptable Group must consider making substantial changes in their maritime policies if they wish to approach the other two groups. The Negotiable Group is also need to make concessions in maritime policies to meet the requirements of the WTO and pave the way for further negotiation.

In fact, representatives from Negotiable Group have called for the active participation of all Members in the on-going negotiation with a view to achieving meaningful liberalization of the maritime transport service sector, consistent with sustainable development, security and

safety, and thereby securing broad coverage of this sector in the multilateral trading system and the General Agreement on Trade in Services framework.³⁹ So the inter-relation between the Negotiation Group and Unacceptable Group is worth studying and alternative strategies to the MTS negotiation need to be considered.

4.5 New Strategies for the WTO MTS Negotiation

4.5.1 A Game Analysis

The index analysis clusters the WTO MTS negotiation participants into three groups basing on their policy practices and commitments. Among the three groups, the negotiable group and the unacceptable group play the key roles to the WTO MTS negotiation. To clarify the situation, game analysis is a proper method to examine the possible strategies of these players. The Negotiable Group and Unacceptable Group have been regarded as two players in a non-cooperative negotiating game, with the EC (Group B – Negotiable Group) represents for the group that adopts relatively liberal maritime policies and the US (Group A – Unacceptable Group) stands for the group that is practicing restrictive ones. Each of these two groups has two optional strategies, i.e. liberalism and protectionism. Liberalism refers to the further opening of a country's maritime industry so as to achieve a satisfactory result in the WTO MTS negotiation, and the latter means that a country desires to maintain the status quo.⁴⁰

³⁹ WTO: TN/S/W/11, 3 March 2003.

⁴⁰ Liberalism in shipping was originally defined as the merchant marines operate on the freight market without any intervention of the public bodies/governments or their agencies. Protectionism is policy aimed at protecting domestic industries from external competition. See Chrzanowski, I. (1985), *An Introduction to Shipping Economics*, Fairplay Publications, pp. 113-16.

Figure 4 - 2 WTO Negotiation Matrix between the US and Other Members

Negotiable Group (Australia, Canada, China, EC, Japan etc,)	Unacceptable Group (US, Brazil) →	
	Protectionism	Liberalism
Protectionism	0, 0	a, b
Liberalism	c, d	e, f

←

↑

In case of disagreement, both nations would get a zero payoff, so this would be the worst outcome. When Negotiable Group (B) opens its shipping field to Unacceptable Group (A), while Group A remains protection policy, then the payoff for Group A is surely larger than when it opens to Group B ($a < e < c$) and *vice versa* ($d < f < b$).⁴¹ So this matrix has two equilibriums, which can to some extent explain why the WTO MTS negotiation came into stagnation, because there are no strategies that can satisfy both groups. Eric Rasmusen⁴² argues that a possible solution to such a game lies in preferences of the players.

The index analysis illustrates that the policy practices and commitments to the MTS negotiation of the Negotiable Group, i.e., Australia, Canada, China, the EC, India, Japan, and the Republic of Korea, has already been close to the WTO requirements (See Figure 4-1). Hence, the preference of the US, which is a determinant player in the Unacceptable

⁴¹ If Group A opens up its maritime services industry and Group B prefers to remain closed, because its domestic service providers will enter and gain from Group A's market while maintaining control of its domestic market and vice versa.

⁴² Eric, R. (2003), *Games and Information: An Introduction to Game Theory*, 2nd ed., Peking University Press, p. 118.

Group, will decide the progress of the WTO MTS negotiation.⁴³ The game analysis corroborates from the other aspect: if the US maintained the current protection maritime policy, the negotiation would hardly achieve any progress.

4.5.2 Could the MTS Negotiation Proceed without the US?

The US case study in the Chapter 3 clarifies that the status quo of its maritime industry and defined economic indicators determine it hardly to make substantial concessions in the negotiation, and the game analysis also expatiates that the US preference is attributable to the stagnation of negotiation. Therefore the MTS negotiation may consider that the rest participants to continue processing the negotiation without offers from the US.

The legal possibility for such solution rests on the *Decision on Negotiation on Maritime Transport Services*. Its first paragraph states that the negotiation shall be conducted on a voluntary basis.⁴⁴ The refusal of the US to provide offers can, to some extent, be regarded as evidence of an unwillingness to participate in the negotiation.

The primary legal sources for the MTS negotiation are three documents: the General Agreement on Trade in Services, its Annex on Negotiation on Maritime Transport Services, and the Decision on Negotiation on Maritime Transport Services. Pursuant to the principles regulated in these three documents, 'the specific commitments on MTS, which is inscribed in a Member's Schedule, will not be affected by this negotiation'⁴⁵ and the aim of the negotiation is to eliminate the restrictions relating to the three pillars. Different from the

⁴³ The US maritime policy and its economic indicators are reviewed in the Chapter 3 in detail.

⁴⁴ WTO, Decision on Negotiations on Maritime Transport Services, 15 April 1994, para 1.

⁴⁵ Article 2, Annex on Negotiations on Maritime Transport Services.

United Nations, the WTO members do not have veto powers and the WTO operates by means of consensus⁴⁶. Therefore, the other participants have the possibility to carry on the negotiation without the US.

In the statistics of the ISL, the rest participants to the WTO MTS negotiation control about 63% of the world's merchant fleets and account for about 77% of the world's total gross tonnage,⁴⁷ which are much larger than the proportion held by the US. The waterborne trade volume of the EC, Japan, Norway, China, Hong Kong China, Korea (South), Taiwan China, and Singapore accounts for one-third of the world's total volume and two times of the US,⁴⁸ which proves the power of these participants to the negotiation. Thus, an agreement among these nations still has a substantial effect to the world maritime industry and be attractive to other WTO members, who desire to enjoy the benefits from the agreement in the MTS sector.

In addition, the US still has the opportunity to enter this agreement when it thinks the time is right. After all, the MTS negotiation does not exclude the possibility of bilateral and regional maritime agreements. Hence, if any member is not satisfied with the agreement, that member may negotiate rules with specific nations/organizations, such as the EC and APEC.

⁴⁶ Article 4, Decision on the Establishment of the Preparatory Committee for the World Trade Organization.

⁴⁷ ISL (2003), *Shipping Statistics Yearbook*.

⁴⁸ In the year 2001, the volume of the world's waterborne trade was 11,961,000 thousand tons. UNCTAD, *Review of Maritime Transport 2004*. The total waterborne trade volume of the EC, Japan, Norway, China, Hong Kong China, Korea (South), Taiwan China, and Singapore was 4,870,267 thousand tons. The waterborne trade volume of the US was 2,110,000 thousand tons. The data for the waterborne trade volume of these nine selected nations were taken from the official websites of the Statistics Departments of these nations.

On the other hand, it shall be also noticed that although the US is comparatively not as strong as the other participants in the MTS negotiation, it is still the strongest trading entity in the world. In 2002, the US accounted for 11.16% of the world's exports of merchandise and 16.9% of its imports – much larger than other nations.

Without the participation of the US, the MTS negotiation would be incomplete and lack of desired effects. In the meantime, super power as the US, it also has invisible political influence on other nations. For example, because of its lack of enthusiasm during the negotiation, Austria and the Dominican Republic withdrew their offers⁴⁹, and many nations have urged the WTO to encourage the US to make offers. So, if the US did not participate in the negotiation, it might affect the standpoints of some participants in the negotiation.

4.5.3 Technical Improvements for Future Negotiation Setting

If the MTS negotiation expects to proceed with the participation of the US, alternative negotiation strategies need to be explored. Some members have already expressed their anxieties in their communication documents and some have also proposed alternative solutions for putting an end to the situation of stasis.

Opinions from these members are quite academic, and they have considered it necessary to explore other appropriate negotiating methodologies to tackle the difficulties encountered in the MTS negotiation. For example, South Korea proposed that the Council for Trade in Services should first 'establish a basic framework for the negotiation on maritime transport

⁴⁹ WTO, *Uruguay Round and Post-Uruguay Round negotiations in maritime transport services*, available at http://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_urneg_e.htm, (last visited August 1, 2006).

services, including the scope and timeframe of negotiation’,⁵⁰ and that such a framework would provide a common basis for further negotiation.

Horizontal Model

During the 17th Meeting of APEC Transportation Working Group (Singapore, 27-31 March 2000), the Australian delegation proposed two new models – the horizontal model and the cluster model - in their information paper entitled ‘Maritime Transport Services and the GATS’ for the development of the WTO MTS negotiation.

The horizontal model ‘retains the ‘three pillar’ approach but provides additional flexibility by adding other criteria to the agreement’; and Maritime Transport Services Understanding ‘is an understanding that is endorsed by core members that agreed to bind its specific principles at the end of the negotiation’.⁵¹ This model aims to set horizontal criteria for all pillars, for example, connecting the tonnage or volume to the agreement. The advantage of this model is that ‘it allows greater flexibility to take into account and reconcile the differing concerns of interested parties’.⁵² However, this model not only neglects the genuine difficulties existing in previous WTO MTS negotiation, but makes the situation more complex, which would make the negotiation more difficult to achieve progress.

⁵⁰ S/CSS/W/87 of 11 May 2001, para 9.

⁵¹ Delegation of Australia, Maritime Transport Services and the GATS, 22 March 2000.

⁵² Note on the Meeting of 13 July 1994, S/NGMTS/2, 4 August 1994.

Cluster Model

Under this model, services that are ‘intrinsically linked in the supply chain are identified and an agreement would form around that group of services’.⁵³ This model is completely different from the original ‘three-pillar’ approach and regroups maritime transport services into some new clusters. Such a measure would provide members with greater flexibility to negotiate by allowing them to reach agreements in clusters with lower domestic and internal pressures, and this will pave a way for further developments in the negotiation. Although this model is constructive for solving the current stagnation in the MTS negotiation, it lacks detailed research on existing offers made by members and does not contain specific measures regarding the reclassification of clusters. However, it illustrates a new image for further research.

Re-classification

The WTO MTS negotiation was established on the three-pillar model, namely, international shipping, maritime auxiliary services, and access to and use of port facilities. However, this classification has been proposed for about twenty years, while the maritime transport industry developed dramatically during the same period. Thus, the original method of classification may, to some extent, be not appropriate to the current situation. The WTO Secretariat has also recognized this problem and made an effort to find possible solutions,⁵⁴ but has focused more on the schedule of the negotiating members' commitments than on the classification itself.

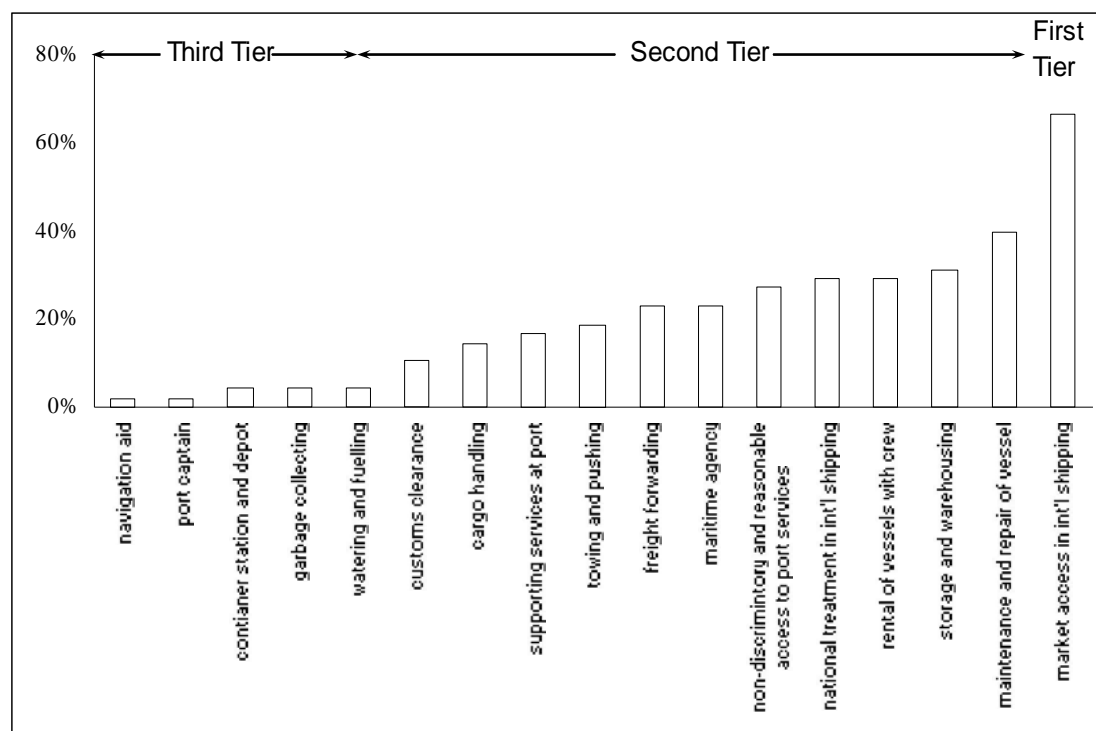
⁵³ Communication from Australia – Negotiating Proposal for Maritime Transport Services, S/CSS/W/111, 1 October 2001, para. 7.

⁵⁴ *Ibid.*

The specific commitments made by the members to the negotiation disclose that although the negotiation has not made much progress in the past ten years, consensus already emerged among some negotiation participants. Among all of the sub-sectors covered by these offers, international shipping is the most open one, having been committed by more than 65% of the negotiation members. Next to this sector, a cluster of about 10 sub-sectors have been responded by more than 10% members, which include the maintenance and repair of vessels, storage and warehousing, the rental of vessels with crews, non-discriminatory port services, maritime agency, freight forwarding, towing and pushing, cargo handling, etc. The tier, which is lack of agreement, consists of the following five services: navigation aids, port captains, container stations and depots, watering and fueling, and custom's clearance. These services have been traditionally controlled by states and restricted to overseas service providers, which made them difficult to be liberalized.

The Figure 4-3 indicates that the commitments made by current participants collectively form three tiers, and negotiation shall be carried on among members in those sub-sectors with higher agreement, i.e., the first tier and second tier, while the WTO can continue to work on the left part with less agreement (the third tier).

Figure 4 - 3 Schedule-based Specific Commitments



Source: *Maritime Transport Services*, Background Note by the (WTO) Secretariat (S/C/W/62 and S/CSS/W/106)

On the other hand, this result also confirms the problem associated with the three-pillar model, which was suspected at the beginning of 1994 round of negotiation.⁵⁵ It evidences that the model shall be attributable to the failure of previous negotiation, since it does not provide a means of reaching an agreement.⁵⁶ Therefore, if the WTO could reclassify into a new package those sub-sectors in which most of the members made commitments, some substantial agreements could be concluded in a less difficult atmosphere.

⁵⁵ 'One delegation maintained that the draft did not reflect accurately the market structure or the regulatory framework of the sector ... Most participants ... acknowledged that the draft schedule may not address all issues relevant to the sector.' *Supra* note 50.

⁵⁶ *Supra* note 51.

In the meantime, with the development of the maritime services industry, some new services have appeared, e.g., third party logistics services. In the original classification, such services fall under different sectors and make the negotiation complicate, and by regrouping maritime transport services, such new services shall be reconsidered and cluster into a new category. Hence, the subject of reclassification should receive more attention in order to ease the discrepancies among members and adapt to the new development of MTS industry.

Prioritization

The NGMTS originally planned to conclude a total agreement covering the whole area of maritime services, but, as has been proved, this approach is attributable to the stagnation in the negotiation. Thus, the objective of any new negotiating method should consider the prioritization of the MTS negotiation. In other words, agreements on some clusters of services, on which most members have made commitments, should be concluded in advance. These areas should then be regarded as common ground for further progress of the negotiation.

Re-classification and prioritization are closely inter-related and neither can be considered or applied separately. These two steps shall be combined in any exploration of a proper outlet for future WTO MTS negotiation.

4.6 Summary

The index analysis reveals the huge gap exist between protectionist group, represented by US, and acceptable group of the rest of countries, such as Canada, China, EC and Japan. The

result confirms the hypotheses that the US is to be blamed for the stagnation in the WTO MTS negotiation. The US stance of protectionism in its maritime policy is rooted in its economic indicators and the situations can hardly be expected to change in the near future.

Hence, one solution for the other negotiating participants is to proceed with the negotiation without the attendance of the US, which is permissible within the legal framework of the WTO, as well as in international trade law, even though such solution would inevitably depreciate the results of the WTO MTS negotiation.

From the technical aspect, the 20-year-old three-pillar model for maritime transport service is also attributable to the stagnation of the negotiation, which ignores the existing consensus among participants. If the sub-sectors with higher agreement could be regrouped into a new package and given higher priority, a preliminary agreement on maritime transport services is vividly portrayed.

CHAPTER 5

LIBERALIZATION OF CHINA MARITIME POLICY

AFTER WTO ACCESSION

Chapters 5-7 form a comprehensive case study on China with the aims, 1) to verify the model established in the Chapter 3; 2) to explore an optimum policy for Chinese maritime industry; and 3) to propose legislative suggestions to China. This Chapter 5 reviews China maritime legislation before and after its WTO accession, and their impacts on its maritime industry and foreign investment.

5.1 Introduction

Since the economic reform in 1980s, China has become a significant participant to the international trading system. During this course, China maritime industry also receives a great expansion and turns into a major maritime nation in the world. Regardless of the importance of China, a systematical research on its maritime case is still absent and the following three chapters aim to comprehensively expatiate on the developing process of China maritime legislation and industry. The defined economic indicators will be examined to explain whether China maritime policy is adoptable to its maritime developing objectives. Suggestions on further maritime policy making will be proposed accordingly.

Having officially become the 143rd member of the WTO on December 11th 2001, China has since been working on reconstituting its maritime policy, not only to carry out its

commitments under the WTO, but also to pave the way for further negotiations on the WTO Maritime Agreement. As China trade expands exponentially, no industry is more affected than the maritime sector, which has undergone a privatizing process during this course and will be discussed in detail in the next Chapter. This is particularly the case as rising trade volumes are accompanied by easier access to China international and domestic logistics market and, in consequence, to a sharp increase in competition as overseas companies enter the market to carry China trade.

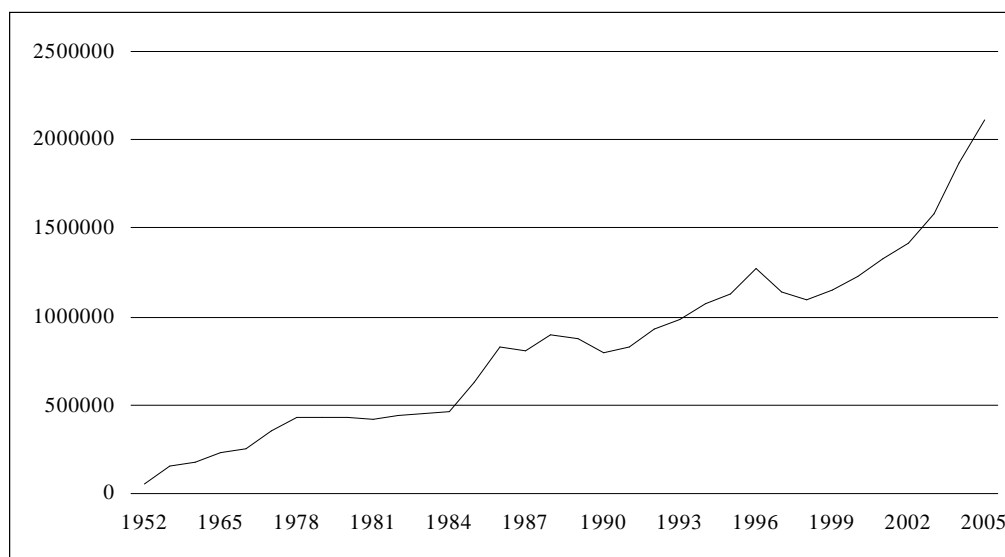
For further discussion, a quick review on the development of China maritime industry is necessary. In 2005, China was ranked No. 4 in the top 35 most important maritime nations and territories, after Greece, Japan and Germany and accounted for 6.77% of world total tonnage.¹ Its waterborne cargo volume in 2005 had reached 2,110 million tons and total freight ton-kilometers had reached 4,806 billion ton/km; increases of 12.8% and 16.9% respectively over the equivalent figures for 2004.² In total, the cargo volume and the total ton-kms carried by water transport made up 11.49% and 61.35% respectively of the overall national figures for freight transport across all modes³. Figure 5-1 shows this increasing trend in China waterborne transportation and attests to the significance of the role that China plays in the world maritime industry.

¹ UNCTAD (2005), *Review of Maritime Transport 2005*, United Nations: New York and Geneva, p. 33.

² National Bureau of Statistics of China (2006), *Statistical Report on National Economic and Social Development 2005*.

³ *Ibid.*

Figure 5 - 1 Waterborne Transportation in China 1952-2005 (000' ton)



Source: National Bureau of Statistics, China Statistics Yearbook

As of May 2004, there were 22 wholly foreign-owned shipping companies, 71 foreign-owned shipping company branches and more than 900 representative offices of foreign shipping companies operating in China. These enterprises already compete directly in China cargo handling, shipping and inland container transportation, international freight forwarding, freight agency and markets⁴.

Falling within the scope of China trade in services, the maritime sector was actually the most liberally regulated of all the service sectors even before WTO accession. Most specific regulations and/or industry practice had, in fact, already attained a level commensurate with that required by the WTO. Even well before its WTO accession, China has been pursuing policies of greater liberalism in its maritime sector and, indeed, has achieved some quite significant results in this respect. In addition to this self-imposed liberalism, WTO accession

⁴ Ministry of Communications (2005), *Report on Statistics and Analysis of Road and Water Transportation*.

will impose a number of other commitments on China maritime transport services. This chapter examines the changes in China maritime policy by adopting a comparative approach, and then analyzes the impacts of these legislative changes.

5.2 China Maritime Legal System before WTO

Chinese government continuously adopted and promulgated a series of policies pursuant to the general tendency of international shipping practice in international maritime transport, port service and other auxiliary service in order to accelerate the developing pace of modern international maritime industry. Even before its WTO accession, most of China maritime regulations have already approached to the WTO requirements. The comparison between the pre-WTO China maritime policy practices and its post-WTO changes follows the tripartite fashion originating from the WTO MTS negotiation.

5.2.1 Maritime Transport Services

Maritime transport services comprise both passenger transport and freight transport between ports in different nations (this is the so-called international transport or blue water services). Maritime transport policies include the policies of commercial presence, i.e., access to national maritime transport market; policies relating to cargo transportation, i.e. cargo reservation, cargo preference and cabotage.

Commercial Presence

Liner Transportation

In June 1990, MOC promulgated the *Regulations on the Management of International Liner Transportation*, which is applicable to all liners engaging in transportation between China ports and foreign ports. This regulation permits foreign shipping companies to “engage in international liner transport in China through written application to the MOC by its agencies at China ports”⁵. In 1992, the State Council urged foreign-invested liners or overseas Chinese invested liners to call at China ports pursuant to the reciprocal principle upon those shipping lines that national shipping companies were unable to operate or liner frequency was insufficient. By the end of 1996, China opened total 81 ports and more than 110 international shipping lines to foreign liners, which were about 1200 sailings in total.

Establishment of Shipping Companies

The MOC promulgated *Interim Regulations on the Management of International Shipping Companies* in 1990 and permitted foreign investors to establish shipping companies in China by joint-ventures⁶. Such joint ventures must be established in accordance with the *PRC Law on Sino-Foreign Joint Ventures* and its application rules, while foreign investors may not hold more than 49% of the resultant shares. On December 22 1995, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC, now is substituted by the Ministry of Commerce) and the MOC jointly promulgated the *Notice on Issues Relating to the Establishment of Wholly Foreign Owned Shipping Companies in China by Foreign Shipping Companies*. This notice elaborately regulated issues about the establishment of wholly

⁵ Regulations on the Management of International Liner Transportation, promulgated by the MOC on 1 July 1990 and effective as of the same day, art. 5.

⁶ Interim Regulations on the Management of International Shipping Companies, art. 3.

foreign owned shipping companies in China in accordance with Maritime Agreements or Maritime Memoranda between China and foreign governments. Foreign shipping companies were permitted to canvass for cargo, sign the parent company's bill of lading, balance freight, conclude contracts for transportation service, and other businesses allowed by China laws and regulations.⁷ It also regulated that wholly foreign owned shipping companies shall apply to establish affiliates in other ports after operation for one year and payment of registered capital.⁸ By the end of 2001, more than 110 companies⁹ and their affiliates had been authorized by competent authorities to establish wholly foreign-owned shipping companies, and another around 120 companies have been allowed to run business as joint ventures.¹⁰

Cargo Preference

Preference cargo follows from "the reservation for transportation on national flag vessels, of all or a portion of all oceanborne cargo which moves in international trade either as a direct result of government's involvement or indirectly because of the financial sponsorship of a program or guarantee provided by the government."¹¹ Before the 1980s, China implemented the policy of national cargoes transported by national vessels basically. Chinese foreign trade cargoes were allocated unified by the relevant departments. The individual shipping company just implemented the national instructive plan for the transport. In 1988, the State

⁷ Notice on Issues Relating to the Establishment of Wholly Foreign Owned Shipping Companies in China by Foreign Shipping Companies, jointly promulgated by the MOFTEC and the MOC on 22 December 1995 and effective as of the same day, art. 3.

⁸ *Ibid*, art. 7.

⁹ The nationalities of these foreign shipping companies include the US, UK, France, German, Netherlands, Norway, Denmark, Israel, Japan, South Korea, Singapore and HKSAR.

¹⁰ WTO Secretariat, Maritime Transport Services, (S/C/W/62 and S/CSS/W/106). A collection of the legal instruments for China's WTO accession is published by the Ministry of Communications at http://www.mofcom.gov.cn/article/200207/20020700032358_1.xml.

¹¹ Maritime Administration, U. S. Department of Transportation, Maritime Administration and Cargo Preference, available at <http://www.marad.dot.gov/offices/cargopref/carprefweb.html>, (last visited August 1, 2006). See, e.g., 46 U.S.C. App. §124(b).

Council promulgated the *Supplementary Notice on the Management of Reforming International Ocean Transportation* and abolished any form of cargo reservation. The government deregulated any proportion regardless of any shipping companies, both domestic and abroad, to undertake China import and export foreign trade cargoes, and deregulated the share undertaken by national vessels. All national shipping companies needed to canvass cargoes through market, while cargo owners were also able to choose carriers basing on common commercial rules, e.g., carriage rates.

On the other hand, seven¹² out of fifty-one bilateral maritime agreements between China and other nations regulated cargo sharing arrangements, but, because of the practical difficulties in implementing such agreements, China officially committed¹³ in 1996 that it would not include the regulation of cargo sharing in future bilateral maritime agreements and it has adhered to this commitment since.

Article 2 of the United Nations Convention on a Code of Conduct for Liner Conferences incorporates the 4:4:2 principle for cargo sharing. China is also a party to this convention, but no China shipping companies have yet participated in any liner conference.¹⁴ Hence, the principle of cargo sharing in this convention has not been applied in practice either. These two examples show that, when compared with other sectors of commerce in China, the maritime sector is relatively open.

¹² Zaire, Algeria, Argentina, Bangladesh, Thailand, Brazil, and U. S. A.

¹³ MOC, Note on Maritime Meeting between China and European Community.

¹⁴ UNCTAD, Convention on a Code of Conduct for Liner Conferences, U.N. Doc. TD/CODE/11/REV.1 (1974), 13 I.L.M. 917, (1974) at Item 4

Cabotage

Cabotage refers to “the carrying on of trade along a country’s coast; the transport of goods or passengers from one port or place to another in the same country.”¹⁵ Before 1992, foreign shipping companies were forbidden to enter China coastal and inland water transportation in general. The State Council promulgated the *Regulation on the Management of Waterway Transportation* in 1987 and regulated that foreign shipping companies were forbidden to engage in coastal and inland water transportation in any form without approval of the MOC.¹⁶ With the liberalization and deregulation of China maritime industry, the MOC promulgated the *Notice on Distribution of Opinions on Deepening Reform, Enlarging Opening and Accelerating Communication Development* on July 25, 1992. It permits foreign shipping companies to engage in China coastal and inland water transportation by joint venture of waterway transportation¹⁷. The Article 4 of the PRC Maritime Law states that “maritime transportation between China ports must be operated by the PRC-flag vessels”, and “foreign flag vessels are not permitted to engage in maritime transportation between China ports without approval of competent communication authorities.”¹⁸ In 1994, the *Regulations of the PRC on Vessels Registration Administration* further clarifies that “vessels owned by China-foreign joint ventures shall register in China and hang a Chinese flag” and “Chinese party shall hold at least 50% of the joint venture”,¹⁹ so any foreign maritime

¹⁵ Garner, B. A. (ed. 1999), *Black’s Law Dictionary*, 7th edition, West Group St. Paul, Minn., p. 194.

¹⁶ Regulation on the Management of Waterway Transportation, promulgated by the State Council on 12 May 1987 and effective as of 1 October 1987, art. 7.

¹⁷ Notice on Distribution of Opinions on Deepening Reform, Enlarging Opening and Accelerating Communication Development, promulgated by the MOC on 25 July 1992 and effective as of the same day, art. 5.

¹⁸ Maritime Law of the People’s Republic of China, promulgated by the Standing Committee of the People’s Congress on 7 November 1992 and effective as of 1 July 1993, art. 3.

¹⁹ Regulations of the PRC on Vessels Registration Administration, promulgated by the State Council on 2 June 1994 and effective as of 1 January 1995, art. 2

services provider may engage in China coastal transportation by simply establishing a commercial presence.

5.2.2 Port Services

Port services covers all services provided to ships while accessing and berthing in ports, such as pilotage, towing and tug assistance, provisioning, garbage collection, port captain's services, and anchorage, especially on the foreign ships that have gained these rights without discrimination. By the end of 2001, China had opened more than 140 ports to foreign flag vessels. Foreign tramps are at liberty to enter these ports. If a shipping company wants to offer liner services for a particular sea route, it must acquire in advance the approval of the MOC, but this regulation applies as well to domestic carriers as to foreign carriers. At ports in China, foreign vessels have been afforded national treatment in all services, including pilotage, tow & tug assistance, fuel and fresh water supply, garbage collecting and ballast waste disposal, navigation aids, anchorage, as well as berthing services. Among these services, pilotage, waste disposal and wastewater treatment are compulsory and other services are on a volunteer base.

Since April 1992, foreign vessels have been assessed the same port charges as national vessels. On 21 January 1994, the new port due regulation (foreign trade part) was officially promulgated by the MOC. All the vessels, Chinese or foreign registered, implemented the unified port due, and the foreign payers settle their accounts in foreign currency with the rate of the Bank of China. Thus the foreign vessels enjoyed the national treatment for the port service and the utilization of the port facilities in China harbors.

As of the end of 2000, shipping companies from more than thirty different nations had carved out routes for their container liners at China ports. Among China approximately 3000 near-sea shipping lines and 700 ocean-going shipping lines, overseas shipping companies accounted for 48% and 70 % respectively, which, to some extent, reflected the active participation of foreign maritime service providers.

Additionally, the State Council promulgated in 1985 the *Interim Provisions on Preferences for the Construction of Ports and Piers with Chinese and Foreign Joint Investment* and allowed foreign investors to apply to joint ventures running port and pier construction projects²⁰. As of the end of 1998, construction in fifty-nine ports had been approved, financed by means of equity or contractual joint ventures with an invested amount of US\$ 2.6 billion. In these ports, about forty container berths were run by Sino-foreign joint ventures through tenancy. At present, almost all of the major container ports in China have been developed with the investment of foreign capital.

5.2.3 Maritime Auxiliary Services

Auxiliary services includes cargo handling, storage and warehousing, stevedoring, freight forwarding, customs clearance, container-station, and depot services. Since the early 1990s, China has promulgated quite a few regulations and administrative rules regarding services auxiliary to shipping.

²⁰ Interim Provisions on Preferences for the Construction of Ports and Piers with Chinese and Foreign Joint Investment, promulgated by the State Council on 30 September 1985 and effective as of the same day, art. 2.

The MOFTEC issued the Regulation on the Approval of Foreign-invested International Freight Transport Agency in 1996, which allowed foreign providers to engage in the business of international freight transport agency through joint venture.²¹ From 1990 to 1998, the MOC and MOFTEC jointly promulgated several regulations in succession, to form an ever clearer image of the businesses of freight and shipping agency in international and domestic waterway transport market. These regulations included MOC Regulation on the Administration of International Shipping Agency (1990), MOFTEC Rules on the Approval of International Freight Transport Agency with Foreign Investment (1995), and amendments to MOC Regulation on the Administration of Waterway Transportation (1997), MOC Implementing Rules for the Regulation on the Administration of Waterway Transportation (1998), and MOC Regulation on the Administration of Waterway Transport Services (1998). Through these regulations and rules, foreign service suppliers were authorized to invest in these businesses by means of equity joint ventures or contractual joint ventures.

By the State Council's amendment in 1998 of the Regulation on the Administration of International Oceanborne Container Transport, foreign interests were also allowed to invest, through joint venture, in that business. Such joint ventures were permitted to engage in freight loading and discharging, storage, container consolidation, etc. In 1997, MOC and Ministry of Railway opened this business even wider to foreign investors, jointly issuing the Regulation on the Administration of International Container Multi-modal Transport. By the end of 1998, more than twenty Sino-foreign joint container transport companies and three hundred Sino-foreign joint international freight transport agencies had been approved by the competent authorities.

²¹ Art. 4. This regulation also regulates a capital ceiling for foreign providers, which is no more than 49%.

Foreign shipping companies first established wholly foreign-owned container transport service companies in 1996. By 1999, four such companies had been approved with twenty-two affiliates in the coastal cities. The scope of the business of these companies includes booking, consolidation, storage, issuance of the freight receipt, collection of transport charges and expenses for other approved services, maintenance of containers and other equipment, conclusion of truck transport service contracts, etc.

5.2.4 Taxation

During 1978 and 1979, the MOC implemented the enterprise funding system for all state-owned maritime enterprises directly under the Ministry. Such enterprises could draw 5% of the total salary amount as the enterprise fund if it fulfilled the overall production, quality profile and safety criteria designed by state. And it could also draw 20% from the profit increased for the enterprise fund. From 1980, the enterprise funding system was changed into profit remaining system, that is, an enterprise fulfilled the task designated, it could remain the designed part by proportion, and the extra part could be remained at 20%²².

From 1983 to 1985, the first step – the system of profit and taxation at the same time – was implemented. During the process of changing from profit to taxation, that is, after an enterprise paid designated tax (normally 55%), the profit after taxation could be allocated in three different forms according to increasing rate, fixed proportion and adjusting tax rate, the rest could all remain with the enterprise. In 1986, the second step – taxes used as profit – was implemented, that is, an enterprise could realize its profits and keep it with the

²² Sun, G. and Zhang, S. (1999), *General Review of the Chinese Maritime policy for the Contemporary Era*, Maritime Policy and Management, 1 (26), pp. 93-9.

enterprise after it had paid the state the tax and adjust tax. In 1994, the taxation system was reformed, the above mentioned privileged policy was abolished, and the income tax was unified to 33%. If no special exception, an enterprise will not enjoy income tax reduction privilege.²³

In the maritime transportation, the Ministry of Finance and the State Administration of Taxation jointly promulgated the *Procedures for Collection of Income Taxes of Foreign Shipping Companies from Transport of Freight* in 1996. It regulated that the taxes to be paid by foreign shipping companies shall “be 4.65% of the aggregate revenue obtained by the payer for one time transport of passengers, cargoes or postal articles from a China port to a destination outside China, under a separate tax rate of 3% for business incomes and 1.65% for company incomes²⁴”, which is the same to China shipping companies.

On the other hand, foreign-invested maritime enterprises in China not only enjoyed tax treatment generally equal to that of national enterprises, they also enjoy certain exclusive preferences. For example, enterprises with foreign investment owed income tax at the rate of 30% on the taxable income of their establishments engaged in production or business operations in China. Local enterprises, on the other hand, owed at the rate of 33%.²⁵ If foreign investors chose to establish their enterprises in certain regions, e.g., Special Economic Zones, Economic and Technological Development Zones, or coastal cities, they

²³ *Ibid.*

²⁴ Procedures for Collection of Income Taxes of Foreign Shipping Companies from Transport of Freight, jointly promulgated by the Ministry of Finance and State Bureau of Taxation on 24 October 1996 and effective as of the same day, art.4.

²⁵ Income Tax Law for Enterprises with Foreign Investment, art. 5.

would enjoy a reduced rate of 15% or 24 %²⁶. Furthermore, if foreign investors invested in specified sectors (e.g. high technology, production-oriented industry, etc.), they could be exempted from tax liabilities for the first three years following establishment and then have tax levied at a rate of only 15% in the fourth and fifth years of operation.²⁷

5.2.5 Subsidies

The definition of subsidy is ‘a financial contribution, income or price support by a government or any public body within its territory.’²⁸ Subsidies that reduce the operational cost of shipping companies are common in the industry, but such measures lead to unfair competition. Since the 1980s, China has been removing gradually all kinds of subsidies and, at present, there are none available for those engaged in waterborne transportation. For example, there is no reservation of governmental cargoes in China, so all cargo is transported according to agreements between shipper and carrier that follow the common commercial rules. Another example is that in 1981, all maritime enterprises with independent accounting system were altered from the original planned financial allocation to enterprise loans. Regarding that maritime enterprises were always difficult to repay loans in time, the State Council decided in 1984 that Banks would provide low interest loans for ship building and purchasing, and extend the time limit for repayment of loans, as well as reduce the custom tariffs, but such ship building encouragement rules were also abolished. (In order to encourage the development of a ship-building industry, however, China is considering ship construction subsidies for such enterprises.)

²⁶ *Ibid*, art. 7.

²⁷ *Ibid*, art. 8.

²⁸ Agreement on Subsidies and Countervailing Measures, art. 1.

In general, China had been pursuing liberalism generally in the maritime sector for some time before its WTO accession and had achieved some quite satisfactory results. Regarding most maritime transport services sectors, foreign service providers have already been endowed national treatments as their rivals in China, and even supra-national treatment in some specific areas, e.g. income tax.

5.3 Reform of China Maritime Law to Integrate WTO Commitments

Although China has already made convincing progress in maritime policy, its accession to the WTO still has a great impact on the formulation of maritime policy.

5.3.1 Maritime Transport Services

According to the Services Sectoral Classification List, maritime transport services include six kinds of services, i.e., passenger transportation, freight transportation, rental of vessels with crew, maintenance and repair of vessels.²⁹ With respect to this service sector, WTO regulation mainly focuses 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.

²⁹ WTO Secretariat (1991), Services Sectoral Classification List, HTN. GNS/W/120, Item A, art. 11.

Gradual Standardization of International Shipping Market Administration

The *Regulations of the PRC on International Maritime Transportation* (hereinafter referred to as “the Regulations of Maritime Transportation”) became effective on January 1, 2002 and the *Implementing Rules of the Regulations of the PRC on International Maritime Transportation* (hereinafter referred to as the “Implementing Rules of Maritime Transportation”), drafted on the basis of these Regulations, became effective on March 1, 2003. Together they detail the conditions, procedures, and qualifications for market access to international maritime transportation. The Regulations of Maritime Transportation and the Implementing Rules of Maritime Transportation have adjusted and reformed the administrative pattern with respect to access to the international shipping market; they have simplified the procedures and formalities; and they have enhanced supervision of the competitive conduct of maritime 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 projects, in order to make practical changes to the governmental functions, reducing administrative approval for general economic projects, 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 principles of the Regulations, the Ministry of Communications organized many meetings for publicizing and enforcing the Regulations, reached out to the

relevant departments, entities and enterprises, and rendered necessary consulting and interpretative services with satisfactory results. A year later, it was clear that China maritime 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 services, 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 the investor.³⁰

Jointly promulgated by MOC and the Ministry of Commerce, the *Provision on Administration of Foreign Investment in International Maritime Transportation*³¹ further clarifies the services open to foreign suppliers and the commercial presence required for each service. Pursuant to this provision, foreign investors may operate following services in China with specific commercial presence: A. international shipping transportation, international shipping agency, international shipping management, international oceanborne cargo loading and discharging, international container freight station; B. international

³⁰ Regulations of the People's Republic of China on International Maritime Transportation, promulgated by the State Council of the PRC on 5 December, 2001, signed by Prime Minister Zhu Rong Ji, published on 21 December, 2001, and effective 1 January, 2002. See art.32.

³¹ Promulgated by Decree No. 1 of the Ministry of Communications and the Ministry of Commerce on 2 March, 2004, and effective as of 1 June, 2004.

warehousing storage, as well as C. routine services to vessels owned by foreign investors.³² The routine services to foreign-owned vessels include canvass cargoes, sign bills of lading, settle transport freights, conclude service contracts and engage in other trivial services for vessels³³. With respect to the services comprised in category A, foreign investors may only enter through equity joint ventures or contractual joint ventures; while for the latter two categories of maritime services, wholly foreign-owned enterprises are also permitted besides the two kinds of joint ventures.³⁴

In 1995, the MOC and the MOFTEC jointly promulgated another important regulation, named the *Notice on Questions relating to the Establishment of a Wholly Foreign-owned Shipping Company by Foreign Shipping Companies*.³⁵ Pursuant to this regulation, China would approve foreign shipping companies to operate in China by form of wholly foreign-owned shipping companies in accordance with reciprocal commitments in bilateral maritime agreements or memoranda between China and other countries³⁶.

In January of 2000, this notice was replaced by the *Interim Provisional Regulations on the Examination and Approval of Wholly Foreign-Owned Shipping Companies*, which reaffirmed the reciprocal principle in the old notice.³⁷ This regulation not only confirms the contents of the old Notice, but increases its legislative importance, because pursuant to the

³² Promulgated by Decree No. 1 of the Ministry of Communications and the Ministry of Commerce on 2 March, 2004, and effective as of 1 June, 2004, art. 4.

³³ *Ibid*, art. 13.

³⁴ *Ibid*, art. 4.

³⁵ Notice on Questions Relating to the Establishment of a Wholly-Foreign-Owned Shipping Company by Foreign Shipping Companies, jointly promulgated by the MOFTEC and the MOC on 22 December 1995 and effective as of the same day.

³⁶ *Ibid*, art. 1.

³⁷ Interim Provisional Regulations on the Examination and Approval of Wholly-Foreign-Owned Shipping Companies, jointly promulgated by the MOFTEC and the MOC on 28 January 2000 and effective as of the same day, art. 4.

Legislation Law of the PRC, a regulation is a higher form of law than an administrative document such as a notice or circular.³⁸ This regulation also specified some elementary requirements for the application to establish in China a wholly foreign-owned shipping company, e.g., qualifications of applicant³⁹, requisite documentation⁴⁰ and procedure⁴¹, and requirements for the establishment of an affiliate⁴². Comparing with the old Notice, some application requirements were dispensed with in the new regulation, for example, foreign investors are not required to submit their balance sheets for the preceding three years in application of the establishment; therefore, the new regulation lowers the threshold for such applications. At the same time, however, the regulation retains some requirements from the preceding notice and also introduced several new requirements, which may make establishments of such wholly foreign-owned companies more difficult in China. For example, an applicant enterprise must have been engaged in the 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 three years in advance, and its liner must anchor at this port at least once a month.⁴³ Chinese employees must account for at least 85% of the whole in the wholly foreign-owned company.⁴⁴

³⁸ Legislation Law of the PRC, promulgated by the People's Congress on 15 March 2000 and effective as of 1 July 2000, art. 81.

³⁹ *Supra* note 37, art. 5.

⁴⁰ *Supra* note 37, art. 6.

⁴¹ *Supra* note 37, art. 7.

⁴² *Supra* note 37, art. 10 and 11.

⁴³ *Supra* note 37, art. 5.

⁴⁴ *Supra* note 37, art. 12.

Despite the existing requirements, China has undertaken to meet all of its commitments in the maritime service sector,⁴⁵ through the promulgation of these regulations and administrative rules,

Systematic Reform in Domestic Shipping Administration

A major step in reform of the administrative system for China domestic shipping was commenced in 2002, when the Ministry of Communications issued the *Circular on Adjustment in Reform of Administrative Function and Pattern in Domestic Water Transport*⁴⁶. The objective of this Circular contains: A. to solve the overlapping management and ambiguous functions in domestic waterway transportation; B. to clarify the functions and working divisions of competent communication authorities; C. to optimize the allocation and utilization of waterway transportation resources; D. to simplify the administrative procedures of application and approval.⁴⁷ As a result, the functions and responsibilities of the administrative departments affiliated with or established by the Ministry of Communications 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 MOC has been limited to five items⁴⁸; administrative relationships, tasks, and 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

⁴⁵ Section 11, item A, Schedule of Specific Commitments on Services List of Article II MFN Exemptions ("Schedule"), WT/ACC/CHN/49/Add.2

⁴⁶ Circular on Adjustment in Reform of Administrative Function and Pattern in Domestic Water Transport, promulgated by the MOC on 24 April 2002 and effective as of 1 July 2002.

⁴⁷ *Ibid*, art. 1.

⁴⁸ *Ibid*, art. 3.

projects as: initiating or adjusting container feeder lines or passenger shipping lines, building, purchasing, or demise chartering carrying vessels (other than passenger ships or liquefied dangerous cargo carriers), shifting a ship's operation from international to domestic service, etc.⁴⁹

Reform and Standardization in the Domestic Shipping Market

In order to ensure water traffic safety, provide a sound market environment to operators, and secure prompt, continuous, healthy, and stable development of China maritime industry, the Ministry of Communications 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, enabling 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 MOC 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.

5.3.2 Port Services

China committed in the Schedule to making available at the ports of China to international maritime transport suppliers, on reasonable and non-discriminatory terms and conditions, the following port services: pilotage; towing and tug assistance; provisioning, fuelling and

⁴⁹ *Ibid*, art. 4.

watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; shore-based operational services essential to ship operations; facilities for emergency repairs; and anchorage and berthing services.⁵⁰ Actually, China has provided most of these to foreign suppliers of transport services since promulgation in 1979 of the *Rules on Administration of Foreign-Flag Fleets*.⁵¹ In 1992 and 1997, MOC issued *Rules on Port Charges*, which govern national and international trade respectively. Pursuant to these rules, port charges in China are based on the character of trade (national or international) rather than on the nationality of the vessel. As these rules evidence, China has put much effort into reforming port services and adjusting the regulation of their provision to the requirements of the WTO.

Reform in Port Administration

The strategic reform of the port administration system in China was implemented in 2002, when a substantial amount of ports have achieved in delegating authority of administration to lower levels in the hierarchy. The separation of government administration from port management on a nationwide basis has started, and supporting reforms in delegating the setting of port charges, responsibility for pilotage etc are also progressing smoothly. The transfer of the port administration under the direct control of the Central Government or those under dual administration has already been completed. By July 2002, thirteen provincial or municipal governments involved had embraced the new scheme for port administration. With the exception of the port of Qinhuangdao, which decided to position

⁵⁰ *Supra* note 45

⁵¹ Rules of the PRC on Administration of Foreign-flag Fleets arts. 4, 13, and 35. Some services have been provided in practice to foreign service suppliers, but have not been formally addressed in regulations or administrative rules, e.g., port captain's services.

itself under the direct administration of the Hebei Provincial Government, all ports in the other provinces or municipalities have transferred administrative responsibility for the ports under their remit to the city where each of these ports is actually located. By the end of 2002, the ports of Qinhuangdao, Nantong, Zhangjiagang, Dalian, Wuhan, Anqing and Wuhu had completed the process of separation.

The Port Law

The *Port Law of the PRC* ("Port Law")⁵² was promulgated in 2003 and came into effect on January 1 2004, offering an important resource for addressing problems of planning and administration and for promoting healthy development of the ports. The main contents and progresses embodied in the Port Law shall be examined from following aspects: management modes and systems of port, port construction and operation, and port investment.

Port Management Mode and Management System

Pursuant to the Article 4 and 5 of the Port Law, the right of administrative management is attributable to the State Council and the relevant local people's government of and above county level, and the operational right of the port belongs to economic organizations and individuals.⁵³ This is a legal expression of the "separating administrative and economic management functions in the government and enterprise" and changes China traditional

⁵² Adopted at the 3rd Standing Session of the 10th National People's Congress on 28 June 2003, promulgated on 23 September 2003, and effective on 1 January 2004.

⁵³ *Ibid*, article 4 regulates that "the State Council and the relevant local people's government of and above county level shall in the plan on national economy and social development embody the requirements for port development and planning and protect and make rational use of the port resources by force of law." Article 5 regulates that "the state encourages the economic organizations and individuals at home and abroad to make investment on construction and operation of ports and protect the legitimate rights and interests of investors by force of law."

management modes on ports, which was known as “unification of government and enterprises”, into modern management mode of port. Subject to this new mode, Article 6 regulates that “the administration of ports by local people’s government within its administrative division shall be determined according to the provision on the port administrative system of the State Council.” The management systems in China have two primary types: *magni-communication system* and *independent system*. The former is usually adopted by inland provinces and cities, while the latter is common in coastal provinces and cities. The “magni-communication system” means that administrative functions of the Port Bureau transfer to the local communication authorities where ports locate, and the local communication authorities set a department of port affairs to administer the administration and supervision of ports. The “independent system” divides the Port Bureau into two parts, namely, Bureau of Port Management and Port Affairs Group. The former is in charge of administrative management of ports and the latter is responsible to port operation. Through the implementation of the Port Law, the “independent system”, which is adaptable to the modern development of ports and associated with international traditions, is widely popularized.

Port Construction and Operation

Article 13 of the Port Law regulates that “the construction of port facilities in the overall planned areas of ports and use of the deep-water lines of ports should be approved by the competent communication authority of the State Council jointly with the comprehensive and macro-control and adjustment department of economy of the State Council, and the construction of port facilities and use of the deep-water lines of ports should be approved by the port administrative departments....”. The Port Law permits all kinds of economic entities

to invest in port construction, which provides possibilities to foreign investors. By the end of 2005, the three main world port groups have already made their investments in China ports, i.e. A. P. Moller – Maersk Group (APM), Hutchison Whampoa Limited (HWL), and Singapore PSA Group (PSA). APM invested in Shanghai East Container Terminal in 2003 and PSA are engaged in the construction of Dalian, Tianjin, Fuzhou and Guangzhou ports. HWL is involved most in China port developments and it is engaged in the following projects: Yantian International Container Terminals, Shenzhen Hutchison Inland Container Depots, Shanghai Container Terminals, Shanghai Pudong International Container Terminals, Shanghai Mingdong Container Terminals, Ningbo Beilun International Container Terminals, Huizhou Port Industrial Corporation, Jiangmen International Container Terminals, Nanhai International Container Terminals, Shantou International Container Terminals, Xiamen International Container Terminals, Zhuhai International Container Terminals (Jiuzhou), Zhuhai International Container Terminals (Gaolan). With the implementation of the Port Law, China ports construction will attract the participation of more foreign investors.

The third Chapter of the Port Law specifically regulates the port operation and the primary principle of this Chapter is that all economic entities shall “obtain the permission for port operations⁵⁴” when acquiring the approval of competent port administrative management departments and, the industrial and commercial registration. This principle alters the traditional mode of port operation, which was totally carried by state-owned enterprises, and in other words, it reflects the deregulation trends in the world ports.

⁵⁴ *Ibid*, art. 23.

In the tradition mode of port management, the competent port authorities were only in charge of public terminals, while private terminal were supervised by individual cargo owners. This results in the disordered layouts of ports and asymmetric development of terminal facilities. For example, there were about 200 private terminals in the Shanghai port and they belonged to several enterprises, e.g., Shanghai Baosteel Group Corporation, Zhabei Power Plants. Pursuant to the Port Law, local governments shall be responsible to the administrative management of all terminals in the port area, which ensures the appropriate utilization of port resources and optimization of city transportation.

Port Investment

Article 5 of the Port Law regulates that “the state encourages the economic organizations and individuals at home and abroad to make investment on construction and operation of ports and protect the legitimate rights and interests of investors by force of law.” In 2004, an updated *Foreign Investment Industrial Guidance Catalogue* (“2004 Catalogue”)⁵⁵ was jointly promulgated by the National Development and Reform Commission and the Ministry of Commerce. It eliminated the requirement that Chinese party hold the majority stake in port enterprises, allowing it to foreign investors.⁵⁶ Soon after the new Catalogue appeared, the relevant authorities approved the first joint venture in the port industry in which foreign investors hold the majority stake, i.e., Xiamen Xiangyu Free Trade Zone Huijian Quay Company, Limited. By the end of 2003, thirty projects for port development that involved direct investment by foreign interests had been approved.

⁵⁵ The Foreign Investment Industrial Catalogue was first promulgated on 20 June 1995, amended on 31 March 2002, and the latest updated version is 30 November 2004. This version became effective as of 1 January 2005. The old and new versions are hereinafter referred to as the 1995 Catalogue and the 2004 Catalogue respectively.

⁵⁶ 2004 Catalogue § 6, Item 4.

The Regulation on Port Operation and Management

To assure the implementation of the Port Law and further clarify some specific issues in the Port Law, the MOC promulgated the *Regulation on Port Operation and Management* on April 15 2004, which was effective as of June 1 2004.

Article 3 of this regulation further clarifies the definition of port operation, which refers to activities that “port operators provide port facilities and other services to vessels, passengers and freight in the port area”. This article also lists seven specific items of such activities. In the meantime, this regulation formulates the principle of “fair competition” and forbids “port operators to practice any form of monopoly”⁵⁷. To ensure the interests of port operators, any organizations or governmental authorities are not allowed either to implement local protection or departmental protection, or to distribute charges to and illegally collect charges from port operators.⁵⁸

This regulation states the detailed market access requirements of port operation, materials⁵⁹ for application, as well as the application procedures⁶⁰. Any economic entities or individuals, who plan to engage in port operation, must meet following three requirements: A. fixed place for business; B. necessary port facilities and equipments associating with the scope and scale of business; C. necessary technicians and management personnel associating with the scope and scale of business.⁶¹

⁵⁷ Regulation on Port Operation and Management, art. 5.

⁵⁸ *Ibid*, art. 5, 27 and 28.

⁵⁹ *Ibid*, art. 10.

⁶⁰ *Ibid*, art. 11-13

⁶¹ *Ibid*, art. 7.

5.3.3 Maritime Auxiliary Services

In the 2004 Catalogue, several new sectors are permitted to foreign service suppliers for the first time. Regarding maritime auxiliary services, foreign investors are encouraged to invest in storage and warehousing, shipping agency, freight forwarding agency, and cargo handling services.⁶² 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%. 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 China's accession. These regulations not only fulfill China commitments,⁶³ 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 China's accession and wholly foreign-owned subsidiaries were to be allowed after three years. Nevertheless, these limitations have already been lifted.⁶⁴

In November 2002, MOFTEC issued the *Regulation on the Administration of International Freight Transport Agency with Foreign Investment*⁶⁵ to replace the *Rules on the Approval of International Freight Transport Agency with Foreign Investment*, which had been issued in 1995. The new regulation incorporated China commitments in this field and detailed the requirements for establishment of an international freight transport agency by foreign

⁶² 2004 Catalogue, § 6, Item 6.

⁶³ The foresaid changes fully implement China's commitments. See 2004 Catalogue §11, item H.

⁶⁴ 2004 Catalogue, §6, item 3.

⁶⁵ Regulation on the Administration of International Freight Transport Agency with Foreign Investment, promulgated by MOFTEC on 11 December 2002 and effective as of 1 January 2003.

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 regulation by competent authorities. Meanwhile, only equity joint ventures and contractual joint ventures in which Chinese party enjoys majority ownership are allowed.⁶⁶

5.3.4 Transparency

One of the most serious problems existing in China legal system before its accession to the WTO was the apparent lack of transparency. In other words, there were many ambiguous expressions in China laws, regulations and administrative rules, which made interpretation by both foreign and (even) domestic parties a difficult task. In order to remove the unseen barriers that this situation created, the newly published *Regulations of Maritime Transportation* specifically regulates the procedures that are necessary for overseas investors to follow in order to establish various kinds of shipping companies in China. The level of detail contained in this new legislation covers such issues as the documentation required, the relevant authorities, the reviewing period for the submission, the permitted scope of possible business activity and the specific activities that would be restricted should the application be approved. As might be expected, these regulations place different requirements on potential overseas suppliers of maritime service depending upon the nature of the different services or enterprises they wish to establish in China. These requirements for each of the shipping and related markets that it is possible to enter can be seen in Table5-1.

⁶⁶ *Ibid*, art. 4.

Table 5 - 1 Regulations on International Maritime Transportation

Sectors	Requirements for Entrance
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 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.

Source: Regulations on International Maritime Transportation

For specific maritime services, the regulation puts different requirements, which is clear to all potential investors. Subject to these requirements, national/foreign investors shall be convenient to establish relevant enterprises.

For the scope of business of the four kinds of enterprises or activities outlined in Table 5-1, the *Regulations of Maritime Transportation* adopts two legislative methods. Regarding

international shipping services and non-vessel-operating services, it regulates the following actions that foreign investors are prohibited from undertaking.

- l Providing service at lower freight rates than normal and reasonable ones, thereby prejudicing fair competition;
- l Offering secret rebates to shippers, not reflected in the book-keeping, for the purpose of soliciting cargoes;
- l Arbitrarily taking advantage of a dominant position to impose discriminatory freight rates or other restrictive terms detrimental to the other party to the transaction;
- l Committing any other actions detrimental to the other party to the transaction or the order of the international shipping market.⁶⁷

This means that overseas investors in either of these two spheres of activity are allowed to engage in any aspect of that business as long as the law and regulations do not expressly prohibit it. In contrast, for those who invest in the international shipping agency services and international ship management services, it regulates the scope of business in great detail. Overseas operators that invest in either of these two areas will not be allowed to engage in any business that has not been listed. Through both of these approaches, foreign investors are made very clear about the possible scope of the business in which they are allowed to engage.

⁶⁷ *Supra* note 30, art. 27.

Table 5 - 2 International Shipping Agency Services⁶⁸

-
1. Managing the formalities for ship's entry into or departure from ports, arranging pilotage, berthing and loading & discharging;
 2. Signing B/L or carriage contracts and accepting freight-space booking on behalf of the carrier;
 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 principal;
 6. Arranging passenger transport and attending to procedures for transport of passengers by sea;
 7. Other pertinent business.

International Ship Management Services

Conducting sales and purchases of vessels, chartering vessels, and managing other assets relating to vessels;

Managing ship engineering functions, handling navigational affairs, and arranging ship repair and maintenance;

Recruiting and training mariners and assigning them to ships;

Performing other services for maintaining the technical standards of vessels and ensuring their proper navigation.

Through a large and multifaceted initiative of legislative and administrative reform, China has endeavored to carry out its WTO commitments in the sector of maritime service. By the end of March 2006, a total of 163 international liner companies and 1692 non-vessel-operating companies have been approved by the competent authorities, in accordance with

⁶⁸ *Supra* note 30, art. 29.

the new regulations and administrative rules⁶⁹. Through the vast amount of legislative and administrative work that this has entailed, China has endeavored to carry out its commitments under the WTO to the maritime service sector. In so doing, a new, three-dimensional shipping administrative system has gradually come into shape, which comprises the three independent, but inter-connected service sectors, of maritime transport, port services and auxiliary services. This coincides exactly with the classification system employed by the WTO and suggests that an analysis of the changes in China legal framework for shipping should follow this taxonomy.

5.4 Evaluating the New Framework of China Maritime Policy

With the objective of complying with the commitments it has made as a condition of WTO accession, it is clear from the other studies⁷⁰ and the previous analysis that China is exerting significant efforts to provide a fair, just and stable competitive atmosphere to foreign service suppliers in the maritime sphere of activities. What, however, are the major gains and/or losses that will accrue to maritime service suppliers as a result of the changes that are in the throes of legislation and subsequent phased implementation?

⁶⁹ The lists of those engaged in international liner and non-vessel-operating services are available at http://www.moc.gov.cn/zhuanlan/haiyunzl/t20031120_3893.htm, (last visited August 1, 2006) and http://www.moc.gov.cn/zhuanlan/haiyunzl/t20040224_9459.htm respectively (last visited August 1, 2006).

⁷⁰ For general information on trade and investment barriers in China, see United States, Foreign Trade Barriers Report-China (especially from 1997-2002), at <http://www.ustr.gov/reports>; United States, China-U.S. trade Agreements: Compliance Issues, Congressional Research Service RL30555, updated 1 September 2000 by Wayne M. Morrison; European Union, China-General Features of Trade Policy available at the Market Access Sectoral and Trade Barriers Database at <http://mkacddb.eu.int>; Martin, W. and Mastel, G. (2000), *Operation of the WTO Agreements in the Context of Varying Types of National Regulatory Systems: China and the World Trade Organization: Moving Forward without Sliding Backward*, Law & Policy International Business 31, p. 981; Bhala, R. (2000), *Enter the Dragon: An Essay on China's WTO Accession Saga*, Am. U. International L. Rev. 15, p. 1469.

*Trade-related Investment Measures*⁷¹ that are inconsistent with the obligation of national treatment and the general elimination of quantitative restrictions are prohibited. This includes even those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain a national economic advantage. On the basis of the principles upon which *Trade-Related Investment Measures* are based, as well as China aforesaid commitments, the specific impact of China legal reform on maritime industry can be analyzed from a range of possible perspectives.

5.4.1 Greater Liberalization for Service Suppliers

With amendments of the 1995 Guidance⁷² and the 1995 Catalogue, as well as the fulfillment of China commitments to market access, investors can expect more opportunities for participation in a wider range of maritime service sectors or sub-sectors.

In order to undertake its commitments under WTO accession,, the *encouraged* category in the 2004 Catalogue has been expanded from 186 to 256 fields and the *restricted* category reduced from 112 to 78. China has opened up many fields to foreign investors for the first time and has expanded opportunities for access to others. For example, foreign investors are encouraged to establish international containerized multi-modal transportation enterprises, road freight transportation companies and freight forwarding agencies.⁷³ This regulation just follows China commitments and permits foreign investors to hold majority ownership no

⁷¹ The phrase “Trade-Related Investment Measures” also refers to investment measures related to trade in goods. Trade-Related Investment Measures art. 1.

⁷² The Guidance of Foreign Investment Orientation was first promulgated on 20 June, 1995 and amended on 11 February, 2000 and became effective as of 1 April, 2002 (these are hereinafter referred as the Guidance 1995 and the Guidance 2000 respectively).

⁷³ 2004 Catalogue Annex supra note 30, at §1, items 7 & 8, and § 2, art. 8, item 2.

later than December 11th 2002. Three years following the date of accession, i.e. December 11th 2005, wholly foreign-owned enterprises will be allowed to be established. In the field of rail freight operations (an industry that has traditionally been regarded and treated as strategically important to the China), the transitional period will be longer, with majority overseas ownership allowed no later than December 11th 2004 and wholly foreign-owned enterprises possible after December 11th 2007.⁷⁴

Certain sectors of the maritime and related industries will, however, have more stringent restrictions placed upon them as far as foreign investment is concerned. In the establishment of waterway transportation companies, foreign capital shall not exceed 49% and this restriction will also be applied to maritime agency services.⁷⁵ Pursuant to the 2004 Catalog, only equity or contractual joint ventures are permitted in ocean shipping tally services.⁷⁶ Despite the existence of these restrictions, all these changes provide more potential investment possibilities for foreign investors than previously existed.

5.4.2 A More Amiable Environment for Investment

In order to better protect the interests of service suppliers, during the recent process of legal reform, the principle of "fair competition" has been embodied and emphasized within the relevant rules and regulations. For example, the *Regulations of Maritime Transportation* has embedded within them the very special feature of forbidding the following acts that are deemed to be detrimental to the maintenance and enhancement of fair competition within the shipping market.

⁷⁴ 2004 Catalogue, § 2, art. 3.

⁷⁵ 2004 Catalogue, § 2, art. 2 and art. 8, item 1.

⁷⁶ 2004 Catalogue, § 2, art. 8, item 3.

- ∅ liner conference agreements, operating agreements, or freight rate agreements concluded among international shipping operators engaged in international liner services in which China 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 particular shipping line to and from China ports and which can be detrimental to fair competition;
- ∅ any forbidden act listed in article 27;
- ∅ any other act detrimental to fair competition in international shipping market.⁷⁷

Should any of these circumstances arise then, at the request of any interested parties, the relevant department of the State Council shall establish a group, comprising of at least 3 members, to conduct an intensive investigation. For the purpose of protecting any individuals that may be the subject of such an investigation, then it is incumbent upon the investigating team to notify that individual of the purpose, reason, time limit and every other relevant aspect of the investigation. In accordance with the principle of transparency, the *Regulations of Maritime Transportation* regulates that the investigating period shall not exceed one year, but when necessary, this period can be extended for half a year upon the approval of a competent authority.⁷⁸

⁷⁷ *Supra* note 30, art. 35.

⁷⁸ *Supra* note 30, art. 37.

Upon the completion of the investigation, the investigating group “shall come to a conclusion and notify the person under investigation and the interested parties thereof in writing”⁷⁹. If the acts under investigation are found to damage fair competition, the competent organ is obliged by the *Regulations of Maritime Transportation* to take certain “prohibitive or restrictive measures such as ordering the amendment of 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”.⁸⁰ Prior to making decisions for taking such measures, the parties concerned shall have the right to lodge an appeal to have a hearing on the relevant matters.⁸¹

This is really the first time that China has so clearly incorporated the principle of transparency into its legal system. Such regulations will not only provide a more confidential competitive environment to service suppliers, but also promote the general modernization of China legal system and process of the rule of law

5.4.3 Existing Barriers in China Maritime Policy

As has already been shown, China has made many reforms in the maritime sector following its commitments in the Schedule of Specific Commitments on Services List of Article II MFN Exemptions.⁸² However, overseas interests should be aware that many areas that are deemed to have a significant impact upon the national economy and/or the livelihood of China citizens still require a majority share to be taken by a national interest. For example,

⁷⁹ *Supra* note 30, art. 40.

⁸⁰ *Supra* note 30, art. 40.

⁸¹ *Supra* note 30, art. 41.

⁸² *Supra* note 45.

the proportion of the investment made by foreign investors into Chinese-foreign equity joint ventures engaged in international shipping services and international shipping agency services shall not exceed 49%,⁸³ with the majority share retained in Chinese hands. Another restriction embodied within the *Regulations of Maritime Transportation* is 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 services [...] be appointed by the Chinese party.”⁸⁴

In addition, in the newly promulgated regulations, some new restrictions have also been introduced which may raise new barriers to market entry by overseas service suppliers. For example, the requirement of ‘local content’ is clearly stated in the *Interim Regulation on the Approval and Management of a Wholly-Foreign-Owned Shipping Company*. Article 12 requires that Chinese employees shall account for at least 85% of the workforce of any wholly-foreign-owned shipping company.⁸⁵ This regulation did not exist under the previous legal framework for the maritime sector.

In the *Regulation on the Approval of Foreign-invested International Freight Transport Agency*, the same qualifications are required of both Chinese and overseas interests - i.e. that either “shall have engaged in the international freight transport agency services for at least three years”⁸⁶. However, in the *Regulation on the Administration of International Freight Transport Agency with Foreign Investment*, which replaced the former regulation in 2002,

⁸³ *Supra* note 30, art. 32.

⁸⁴ *Ibid.*

⁸⁵ This was not regulated in the old notice, i.e., Notice on Questions Relating to the Establishment of a Wholly-Foreign-Owned Shipping Company by Foreign Shipping Companies (*supra* note 35).

⁸⁶ Regulation on the Approval of Foreign-invested International Freight Transport Agency, item 2, art. 5.

overseas participants are required to have three year's experience in international freight transport agency services, whereas a Chinese equivalent is only required to have just one year's experience.⁸⁷

The maritime sector is generally one of the most conservative in any nation's economic system, and its regulation by China, now shaped by China's WTO commitments, compares satisfactorily with its regulation by the shipping of major maritime nations.

5.4.4 A Special Case of Hong Kong⁸⁸

In order to strengthen trade and investment cooperation between Mainland⁸⁹ China and the Hong Kong Special Administrative Region and to promote the joint economic development of the two sides, the Mainland/Hong Kong Closer Economic Partnership Arrangement ('CEPA')⁹⁰ was concluded on June 29, 2003. In CEPA, China provides service suppliers from Hong Kong with more preferential treatment than it offered foreigners in the WTO context.

Pursuant to Annex 5 of CEPA, an enterprise is regarded as a Hong Kong company when:

- I The enterprise is registered and established pursuant to the Companies Ordinance or other relevant ordinances of Hong Kong.

⁸⁷ *Supra* note 65, item 1 & 2, art. 5.

⁸⁸ There is a similar arrangement between Mainland China and Macao, the Mainland/Macao Closer Economic Partnership Arrangement. Because Macao is not an important shipping center, this discussion will focus on the arrangement between mainland China and Hong Kong, but the same preferential treatment is reserved for the service suppliers from Macao.

⁸⁹ In CEPA, the word "Mainland" refers to the entire customs territory of China.

⁹⁰ The English translation jointly submitted to the WTO on 27 December, 2003 is published by the Hong Kong Trade and Industry Department, *available at* <http://www.tid.gov.hk/english/cepa/fulltext.html>, (last visited August 1, 2006).

- | The nature and scope of its business of the enterprise in Hong Kong
- | The enterprise pay profits tax of Hong Kong
- | The years of substantive operations of the enterprise in Hong Kong
- | The enterprise owns or rents business premises in Hong Kong to engage in substantive operations. (With respect to maritime transport services, 50% or more of the ships owned by the enterprise, calculated in terms of tonnage, must be registered in Hong Kong.
- | 50 % or more of its total staff is employed in Hong Kong.⁹¹

In the maritime service sector, China will carry out its commitments earlier that it has committed to under the terms of its WTO accession and permit Hong Kong companies to enjoy ‘national treatment’ in respect of the minimum registered capital requirement. For example, with respect to freight forwarding agency and storage & warehousing services, Hong Kong companies are “permitted to operate on the Mainland on a wholly-owned basis two years ahead of China WTO timetable”.⁹²

Regarding maritime services, not only is the aforesaid preferential treatment applied, but Hong Kong service providers are also allowed to “use liner vessels serving main routes to move, without any restrictions, empty containers that they own or rent”, a feature that does not form part of China commitments under the WTO. Additionally, in order to solidify these arrangements, China has confirmed these commitments in the newly issued *Provision on Administration of Foreign Investment in International Maritime Transportation*. Under this

⁹¹ CEPA Annex 5, art. 2.

⁹² CEPA Annex 4, H. Services auxiliary to all mode of transport, Sectors or sub-sectors 11. Transport services.

protocol, as from January 1st 2004, Wholly-Hong Kong owned enterprises may engage in international ship management services, international maritime cargo warehousing, international maritime container freight station and container yard services, and non-vessel-operating services. They may also establish a wholly Hong Kong-owned shipping company in the Chinese mainland to offer such routine services as the canvassing of cargoes, issuance of bills of lading, settlement of freight payments and the signing of service contracts for their owned or operated vessels.⁹³

For maritime service suppliers who have already engaged in the aforesaid business in Hong Kong and fulfilled these requirements, they may enjoy directly this preferential treatment. Such arrangements not only enhance Hong Kong's position for entry into China maritime and related markets, but also provide a wider choice of access routes for overseas service suppliers seeking to enter China maritime service market.

5.5 Summary

Following twenty years' effort since the commencement of China economic reform, its legal system governing maritime industry has already been shaped and achieved some remarkable results. However, with the implementation of new policies and practices that are conditions of its acceptance into the WTO as a full member, another phase of significant reform is currently ongoing in China. Much of this is manifest in the changes that are currently being implemented with respect to legal reform. These are so fundamental that they are likely to

⁹³ *Supra* note 31, art. 17.

bring about significant impacts on China economy and society for a number of years into the future.

From the perspective of the maritime industry, some improvements have already been reaped from the reforms to the maritime legal framework that has been imposed. China's WTO accession has a certainly impact on its maritime policy. However, although China has not fully opened up its maritime industry to market access by overseas interests, this is not a characteristic that is by any means unusual amongst many of the world's leading maritime nations. The extent to which it has liberalized the market, however, should pave the way forward for future negotiations within the WTO on maritime services.

On the other hand, whether this gradual liberalizing trend in China maritime policy is adaptable to the development of national maritime industry is still questionable. In the following Chapter, the status quo of China maritime industry will be critically examined from the economic dimension in accordance with the defined indicators.

CHAPTER 6

A CRITICAL ANALYSIS ON CHINA MARITIME POLICY

The comparative analyses on legal reform in China maritime industry provide an image for the in-depth understanding on the framework of China maritime policy. But without the understanding of the development of China maritime industry, it is difficult to examine whether the effective maritime policy in China is propitious to the developing objectives of its maritime industry. Chapter 6 first reviews the development of China maritime industry, and then tests the defined economic indicators in China with the established model to ascertain whether the reform in China maritime policy is adaptable to its industrial development.

6.1 Introduction

In the time of planned economy, all of Chinese maritime-related enterprises were owned and operated by the governments. Their primary function was to satisfy the demand of oceanborne freight transportation rather than making profits. Therefore, the maritime policy was comprehensively protective to maintain the elementary development of maritime industry.

As reviewed in the Chapter 5, the course of 1978-2005 witnessed the liberalization of China maritime policy, which is accompanied with its economic reform and open-up to the outside

world. Especially in the 1990s, China eliminated several important protective measures, i.e., operation subsidies, cargo reservation, fee preferences and etc. These changes make China maritime industry enter into market competition and its objective, to some extent, alters to the maximization of self-profit. However, during this period, whether China maritime industry gets an opportunity for development? In other words, whether China maritime policy is adaptable to the developing objectives of its maritime industry?

According to the common theory of international economics, liberalism benefits the development of world trade, as well as world maritime industry, but it does not make certain that it is propitious to the development of a specific nation's maritime industry. The objectives of national maritime policy are not only determined by its national considerations, but some latent reasons as well, e.g. national pride.

This Chapter reviews the evolution of China maritime industry, especially its boom after the economic reform. Subject to the defined economic indicators, the development of China maritime industry will be examined in connection with the world maritime industry. Through these examinations, whether China liberalized maritime policy is adaptable to the developing objectives of its maritime industry will be critically analyzed.

6.2 The Development of China Maritime Industry

Having critically reviewed the reform in China maritime legislation before and after its WTO accession, the framework of China maritime policy has been sculptured out. However, it is difficult to examine whether these policies are beneficial to the development of China

maritime industry without essential knowledge about the development of maritime industry. The review on the evolution of China maritime industry is helpful to observe the effects of the changes in its maritime policies. Therefore, the following two sectors will review the development of China maritime industry since its foundation, especially the past 10 years, during which China maritime industry experienced the process of privatization and dramatic development in figure.

At the beginning of establishment, China adopted the planned economy, and its maritime industry was essentially operated by State collectively. At that time, China maritime policy mainly reflected completely protectionism maritime policy and provided comprehensive governmental support to maritime industry.

In its initial years, China was unable to establish its own fleets due to the insufficient development of national economy. However, in order to recover from the civil war, China encouraged the development of foreign trade and demanded the development of ocean transport, which was the sing for the initiation of national fleets.

On June 26, 1950, Chinese-Polish Joint Stock Shipping Company (CHIPOLBROK) came into operation in Tianjin, which was the first Joint Venture ever set up in China mainland since the founding of the People's Republic of China. In September same year, China National Foreign Trade Transportation Company, a shipping company engaging in international trade, was established in Tianjin, and moved to Beijing in August 1952. The main task of the company was to develop China capacity of foreign trade transportation with the vessels leasing from overseas. In order to encourage the overseas merchant fleets to

participate in foreign trade transport, the Ministry of Communications ('MOC') adopted measures that overseas Chinese vessels-owners would play as private seagoing vessel agents. It stated that any property right 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.¹

In 1958, the total waterborne freight transport volume had reached 11.58 million tons², and it was five times as high as it was in 1952. 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 it was difficult to protect its national benefit. Therefore, on the basis of the Ocean Transport Bureau of the MOC, which was established in 1958, the Chinese government decided to accelerate the work of setting up its own maritime enterprise and ocean shipping fleet.

On April 27, 1961, China Ocean Shipping Company ('COSCO') was founded in Beijing. On the same day, its Guangzhou Branch was also established. On April 28, a grand premier navigation ceremony for the first passenger liner "Guanghua" with the national flag of China was held in Huangpu Port, Guangzhou. Later, "Guanghua" arrived in Jakarta, Indonesia to take Chinese who were suffering there back. By the end of 1975, COSCO's fleet capacity in terms of DWT surpassed five millions, indicating an average annual increase of one million DWT. These facts indicated that the China maritime industry came into the stage of self-dependent development and the history of vessel leasing came to an end.

¹ Sun, G. and Zhang, S. (1999), *General Review of the Chinese Maritime policy for the Contemporary Era*, Maritime Policy and Management, 1 (26), pp. 93-9.

² National Bureau of Statistics (2006), *China Statistics Yearbook 2005*.

By the end of 1962, China waterway transport capacity was only 140,000 gt., which was about 1 percent of its total foreign trade volume. Therefore, the transport of foreign trade was most carried by the leased vessels. According to the statistics, the costs of chartering vessels were as much as US\$ 383 million from 1958 to 1962³. During the same period, the international shipping market was in recession and the price of second-hand vessels was continuously decreased. Meanwhile, because the international shipbuilding capacity of global ship yards was surplus for about 30- 40%, they provided preferential policies to attract orders, which included prepaid 10- 30% of the price of the vessel by ship buyers, and the rest amount could be repaid within the successive 7-10 years plus only 5-6% annual interest⁴. Chinese Government seized this opportunity and decided to develop its maritime industry by purchasing second-hand vessels with the abroad floating capital of the Bank of China. At the beginning of 1964, China purchased twenty deep-sea fleets, which accounted for 249,000 tons in total. During the period 1972 to 1975, China purchased another 200 vessels and ordered new ships in overseas shipyards, which made the total tonnage of China merchant fleets breaking through the 10,000 deadweight tonnage.⁵ 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 China maritime industry.

The State Council circulated the *Notice on the Management of Reforming China International Shipping Transportation* in 1984 and indicated the beginning of systematical reform of China maritime industry. The core issue of this notice was to separate the

³ MOC (1998), *Report on the Development of China Shipping*, People's Communications Press.

⁴ *Ibid.*

⁵ *Ibid.*

functions of government and enterprises, and clarify the role of government in maritime industry⁶. It also encouraged national maritime enterprises to participate in competition and enter into international market. COSCO firstly launched international liner business in 1985, which comprised 37 shipping routes and 89 shipping flights. The State Council issued the *Notice on the Management of Further Reforming China International Transportation* on November 10 1992 to replace the old notice of 1984. And in the same year, the MOC promulgated the *Several Opinions on Deepening Reform, Enlarging Opening and Accelerating Transportation Development*. These administrative documents promoted the development of China maritime industry and were propitious for China maritime enterprises to enter the international shipping market.

In 1997, China reformed traditional state-owned shipping companies into four big maritime groups, which are China Ocean Shipping (Group) Company (regrouped from COSCO in 1992), China Changjiang National Shipping (Group) Corporation (set up in 1993), China Shipping (Group) Company (set up in August 1997), and China National Foreign Trade Transportation Group Corporation (regrouped from Sinotrans in 1997). At the end of 2005, total assets of these four groups reached about 250 billion RMB and they possessed more than 57 million deadweight tonnages. These four groups occupied more 90 percent of China waterborne freights market.

Table 6 - 1 Brief of TOP 4 China Shipping Groups (2005)

Company Name	Total Assets (billion RMB)	DWT (thousand ton)
---------------------	--------------------------------------	------------------------------

⁶ Notice on the Management of Reforming China International Shipping Transportation, promulgated by the State Council in 1984, art. 1.

China Ocean Shipping (Group) Company	140	38,000
China Shipping (Group) Company	56.44	13,000
China Changjiang National Shipping (Group) Corporation	20.1	4,160
China National Foreign Trade Transportation Group Corporation	26.57	2,000
Total	243.13	57,160

Source: Official web sites of these four shipping groups.

6.3 A Panorama of China Maritime Industry 1995 – 2005

In the past 10 years, China maritime industry has experienced a process of privatization and received a dramatic development from appearance. This sector reviews this event in figure and displays the 10-year developing plan for China maritime industry. According to the statistics of the ISL, China merchant fleets have developed greatly in figure in the past twenty years. In 1987, there were 1,338 China flag vessels in the world with 17,628,600 deadweight tons, which only accounted for 2.89 percent of the world total gross tonnage⁷. Nevertheless, by the end of 2005, China became the fourth largest shipping country in the world and it was only after Greece, Japan, and Germany⁸. China has controlled 2314 merchant fleet with 54,140,000 deadweight tons and its proportion to the world total dwt reached 6.15 percent⁹. Comparing with 20 years ago, China controlled vessel numbers and deadweight tons have increased 72.94% and 207.11% respectively.

Cargo Transport and Port Development

⁷ ISL, *Shipping Statistics Yearbook 1988*.

⁸ ISL, *Shipping Statistics Yearbook 2005*.

⁹ *Ibid*.

In 2005, China has accomplished a waterway transport volume of 2,110 million tons and a cargo turnover of 4,805.7 billion ton-kilometres, up 12.6% and 16% respectively over the previous year¹⁰. The proportion of the cargo transport volume and the cargo turnover volume is 11.48% and 61.35% respectively of the total cargo transport volumes and turnovers, increased 0.5% and 1.69% comparing with those of the previous year.¹¹

In 2004, the transport volume and cargo turnover of inland waterway transportation were 916 million tons and 218.4 billion ton-kilometers respectively, accounted for 481.9% and 5.3% of the whole waterway transportation¹². The coastal transport volume was 563 million tons and cargo turnover was 698.9 billion ton-kilometers, its proportion to the total amount was 30% and 16.9% respectively¹³. And China oceanborne cargo volume was 395 million tons and cargo turnover was 3225.5 billion ton-kilometers, it occupied proportions of 21.1% and 77.9% respectively in China total cargo volume and turnover in 2004.¹⁴

Table 6 - 2 Total Cargo Transport Volumes, Turnovers and Growth Rates of the Main Transport Modes of the Whole Trade million tons/ billion ton-km

Year	Waterways		Highways		Railways		Airways	
	Cargo volume	Turn over	Cargo volume	Turn over	Cargo volume	Turn over	Cargo volume	Turn over
1980	468.33	507.7	1,421.95	34.3	1,112.79	571.7	0.09	0.1
1985	633.22	772.9	5,380.62	190.3	1,307.09	812.6	0.20	0.4
1990	800.94	1,159.2	7,240.40	335.8	1,506.81	1062.2	0.37	0.8

¹⁰ *Supra* note 2.

¹¹ *Supra* note 2.

¹² MOC (2005), *Statistical Report on the Development of China Communication Industry*.

¹³ *Ibid.*

¹⁴ *Ibid.*

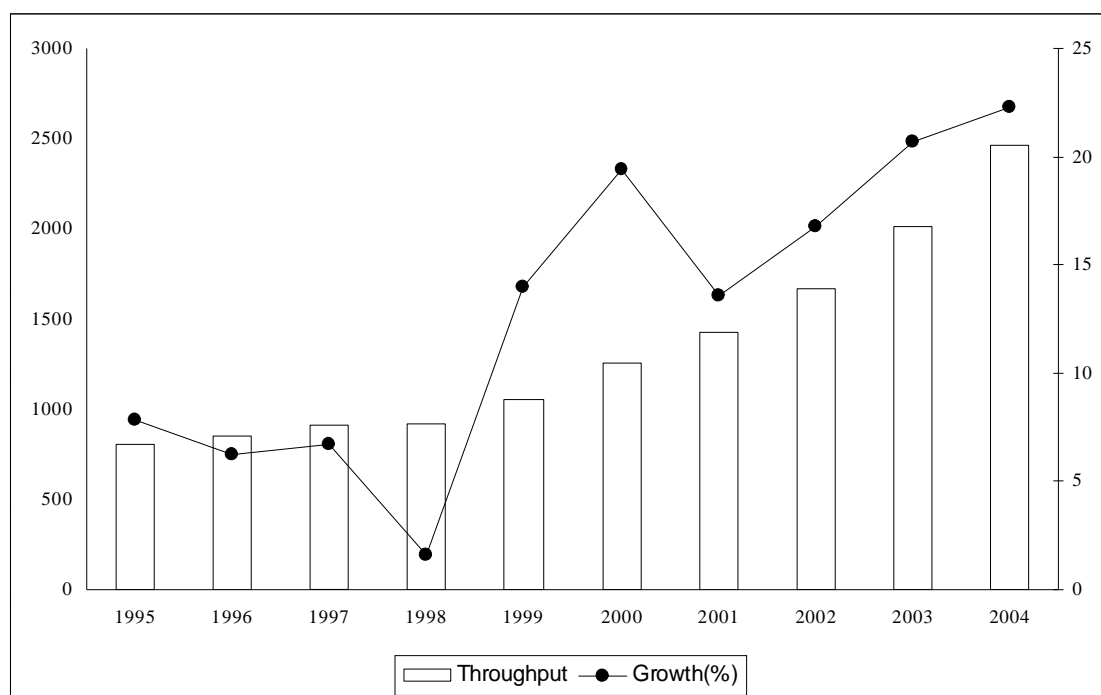
1995	1,131.94	1,755.2	9,403.87	469.5	1,658.55	1287.0	1.01	2.2
1996	1,274.30	1,786.3	9,838.60	501.1	1,688.03	1297.0	1.15	2.5
1997	1,134.06	1,923.5	9,765.36	527.2	1,697.34	1309.7	1.25	2.9
1998	1,095.55	1,940.6	9,760.04	548.3	1,612.43	1231.2	1.40	3.3
1999	1,146.00	2,126.3	9,904.00	572.4	1,569.00	1261.6	2.00	4.2
2000	1,223.91	2,373.4	10,388.13	612.9	1,744.4	1390.2	1.97	5.0
2001	1,326.75	2,598.9	10,563.12	633.0	1,931.89	1469.4	1.71	4.4
2002	1,418.32	2,751.1	11,163.24	678.2	20,49.55	1565.8	2.02	5.2
2003	1,580.70	2,871.6	11,599.57	709.9	2,211.78	1724.7	2.19	5.8
2004	1,873.94	4,142.9	12,449.90	784.1	2,490.17	1928.9	2.77	7.2
2005	2,110	4,805.7	13,290	857.4	2,700	2073.1	3.07	7.9
2005 growth	12.6%	16%	6.75%	9.35%	8.43%	7.48%	9.16%	9.08%

Source: National Bureau of Statistics (2005), *China Statistics Yearbook 2005*.

In 2004, all of China ports handled an aggregate cargo throughput of 4.172 billion tons, an increase of 26.6% as compared with that in 2003, within the f the foreign trade cargo throughput amounted to 1.155 billion tons, up 18.9% over 2003¹⁵.

¹⁵ *Ibid.*

Figure 6 - 1 Throughputs and Growth Rates of the China Coast Ports (1995 – 2004)



Source: National Bureau of Statistics (2005), *China Statistics Yearbook 2005*.

In 2004 the main coastal ports registered an aggregate cargo throughput of 2.538 billion tons, within the figure the foreign trade throughput is 1.056 billion tons, an increase of 22.3% and 19.4% respectively over 2003¹⁶. The chief inland waterway ports accomplished an aggregate cargo throughput of 1.634 billion tons, within the figure the foreign trade cargo throughput is 99 million tons, up 32.5% and 13.7% respectively over 2003¹⁷.

The cargo throughput of the main coastal ports in China always hits the highs and eight ports with the cargo throughput of more than 100 million tons are formed. The cargo throughput of Shanghai Port exceeded 0.3 billion tons, reaching 0.379 billion tons, up 19.8% over 2003,

¹⁶ *Supra* note 2.

¹⁷ *Supra* note 12.

thus becoming the first port exceeding 0.3 billion tons of the cargo throughput¹⁸. The details of the development of top ten China ports have been illustrated in the appendix I. By the end of 2004, the berth places of China ports have reached 35,105, which increased 819 comparing with previous year. Among these berth places, there were total 944 exceeding 10,000 tons and increased 39.6% over 2003.¹⁹

With the rapid progress of development of the western region in China, the inland waterway transport has become increasingly important. Grasping the opportunities brought by the structure adjustment and optimization of the national economy, the inland waterway ports have ended up the lingering situation for a number of years under the prosperous environment of the domestic market, and the cargo throughput of the main inland waterway ports has recoded a bigger increase surge. The twenty five main ports of along the trunk stream of the Changjiang River have got an overall increase of cargo volume with the cargo throughput of 0.43 billion tons, up 17% over that in 1999.²⁰

Container Transport

The year 2004 saw a stably increase in China container transport. The ports in China accomplished a total container throughput of 61.6 million TEUs, a net increase of 26.6% over the previous year. Among the total TEUs, there were 56.62 million TEUs handled by coastal ports, 27.1% increased from the previous year, and the other 4.98 million TEUs were accomplished by inland ports, 20.9% higher than the figure of 2003. By the end of 2005, the

¹⁸ *Supra* note 12.

¹⁹ *Supra* note 12.

²⁰ Changjing River Administration of Navigational Affairs, MOC (2005), *Statistics on Port Throughput of Changjiang River*.

throughput of China top ten container terminals have now all exceeded 1 million TEUs, which demonstrates that the container terminals in China are stepping into the large-scaled and intensified development.

Table 6 - 3 Throughputs and Growth Rates of China Top Ten Container Ports in 2005
million TEUs

Ranking	Port	Throughput in 2005	Throughput In 2004	Growth (%)
1(1)	Shanghai	18.084	14.557	24.2
2(2)	Shenzhen	16.197	13.615	19.0
3(3)	Qingdao	6.307	5.14	22.7
4(4)	Ningbo	5.208	4.006	30.0
5(5)	Tianjin	4.801	3.814	25.9
6(6)	Guangzhou	4.683	3.308	41.6
7(7)	Xiamen	3.342	2.872	16.4
8(8)	Dalian	2.655	2.211	20.1
9(9)	Zhongshan	1.076	0.921	16.8
10(-)	Lianyungang	1.005	-	-

Note: Numbers in the brackets () indicate the ranking in 2004.

Source: National Bureau of Statistics (2006), China Statistics Yearbook 2005.

6.4 Developing Indicators of China Maritime Industry

Observing China maritime industry from figures displayed in previous part, it may take for granted that it developed greatly in the past twenty years, but economic indicators defined in Chapter 3 provide an alternative view to justify the development of national maritime industry. Basing on the statistics of the ISL and UNCTAD, the developing status quo of China maritime industry shall be examined against the development of world maritime

industry in accordance with some general indicators as well as the three defined economic indicators.

6.4.1 General Indicators

In the shipping statistics of UNCTAD and ISL, types of merchant fleets and division of shipping ages are two primary standards for the observation on developing status of a nation's maritime industry. The former reveals the fleet structure, while the latter is an indicator to the aging degree of the merchant fleets.

Types of Merchant Fleets

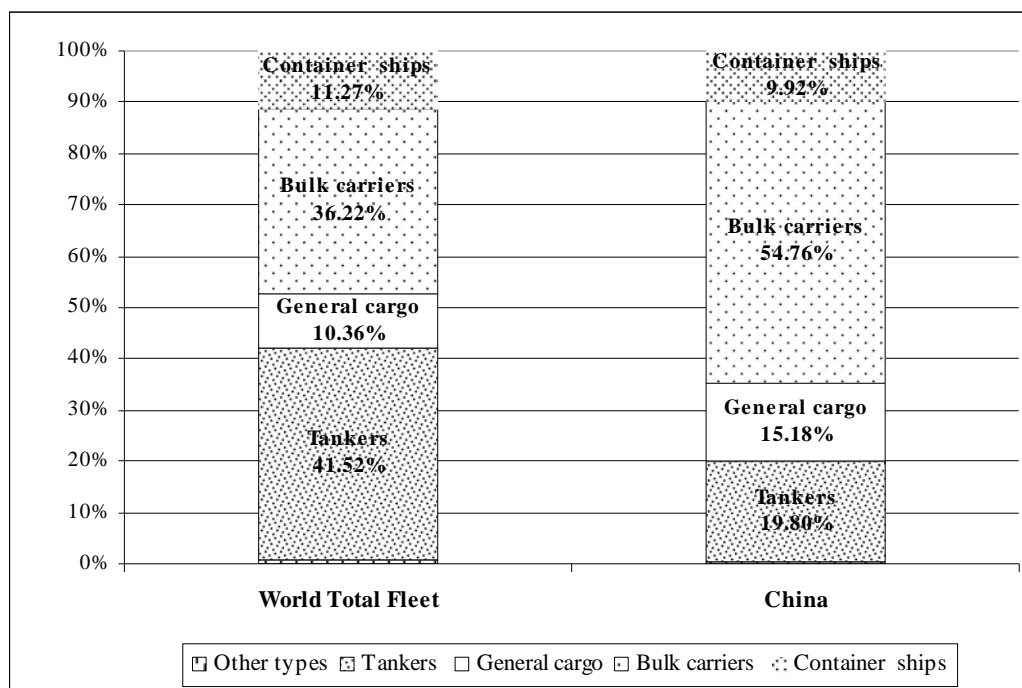
Among the total dwt controlled by China in 2005, the largest proportion, as shown in the Figure 6-2, was bulk carriers, which accounted for almost 55%, and the tankers ranked the second, which was about 20%. Next to these two kinds of vessels, general cargo ships accounted for 15% and container ships were 10%.²¹ In the same year, the largest proportion of all the world merchant fleets was tankers, which were 41%, and bulk carriers occupied the second largest proportion (=36%)²².

²¹ *Supra* note 8.

²² *Supra* note 8.

Figure 6 - 2 Types of Merchant Fleets – World Total v. China – flag (Year 2005)

(Ships of 1000gt and over, in term of dwt)



Source: ISL, *Shipping Statistics Yearbook 2005*.

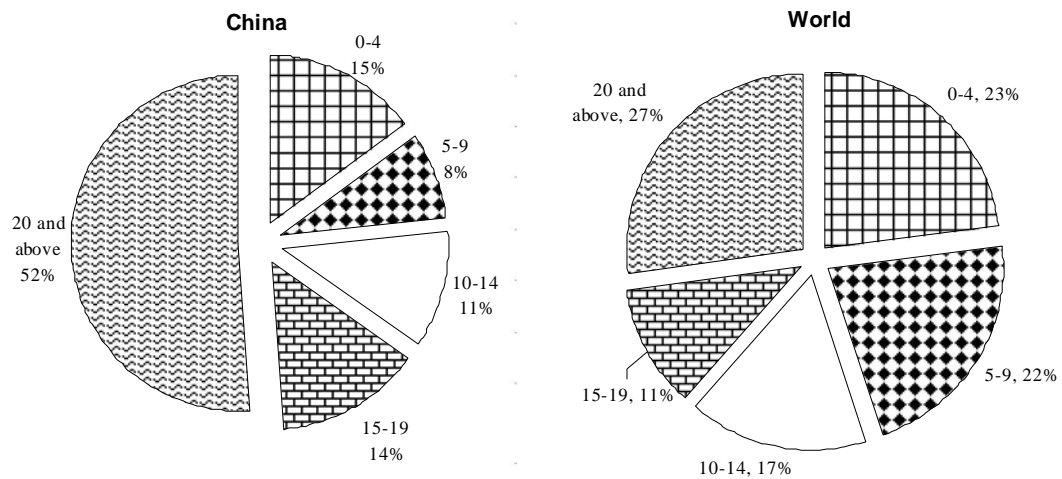
In the meantime, China has become the second oil consuming country in 2003, and its annual consumption reached 309 million tones in 2004, among which 41 percent was imported from overseas countries. This fact, to some extent, indicates that the structure of China controlled vessels is not feasible enough to satisfy its increasing demand of energy import, especially the transportation of some strategic cargoes, e.g. crude oil, natural gas.

Division of Ship Ages

The average age of all China controlled vessels in 2005 was 20.3, and three years older than the whole world merchant fleets. Among the total 2315 merchant fleets controlled by China, 51.2 percent, i.e. about 1185, were older than 20 years. As shown in the Figure 6-3, only

27% of the whole world vessels were more than 20 years, which was much less than the proportion of China.

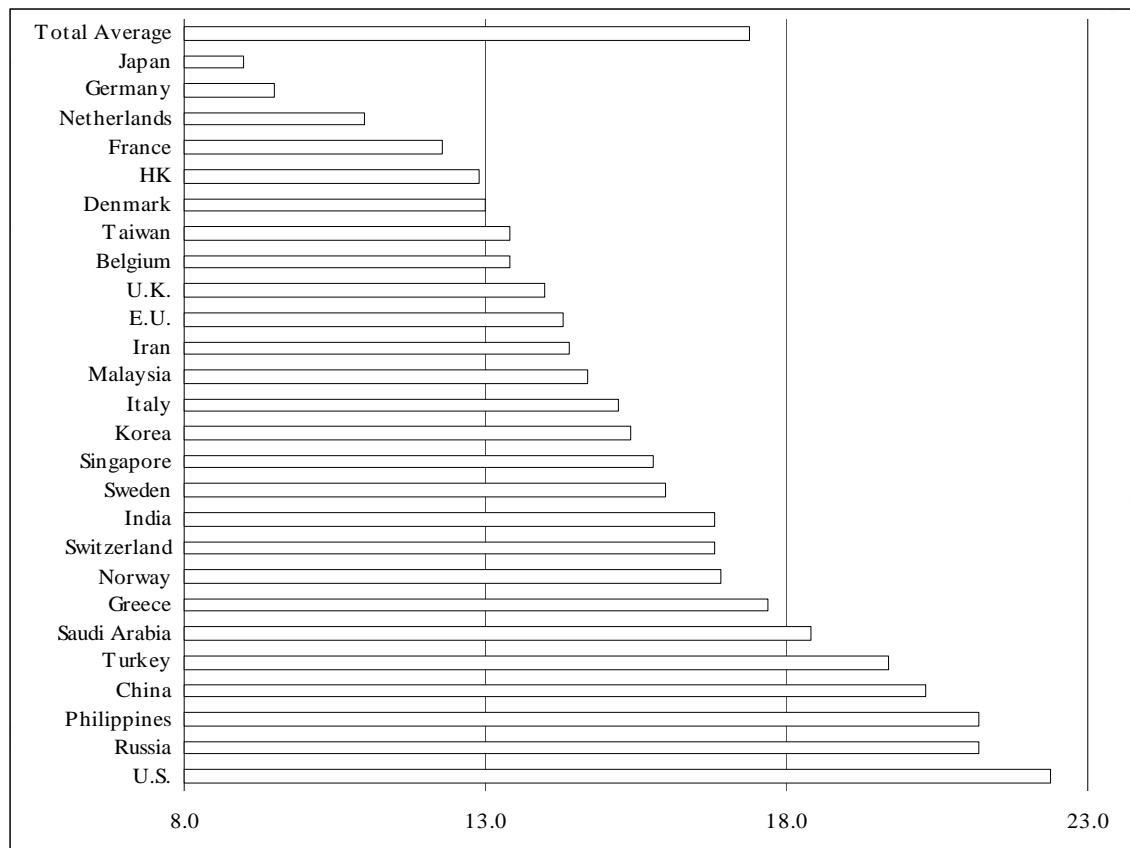
Figure 6 - 3 Division of Ship Ages in 2005 (%)



Source: ISL, *Shipping Statistics Yearbook 2005*.

In the same year, of the top 25 maritime powers by country of domicile, the US controlled vessels were the oldest and its average year is 22.4. As revealed by the Figure 6-4, the average age of China controlled vessels ranked the third. Therefore, the obsolete of merchant fleets becomes one of the serious problems in China maritime development.

Figure 6 - 4 Average Age of Major Maritime Nations Merchant Fleets (2005)



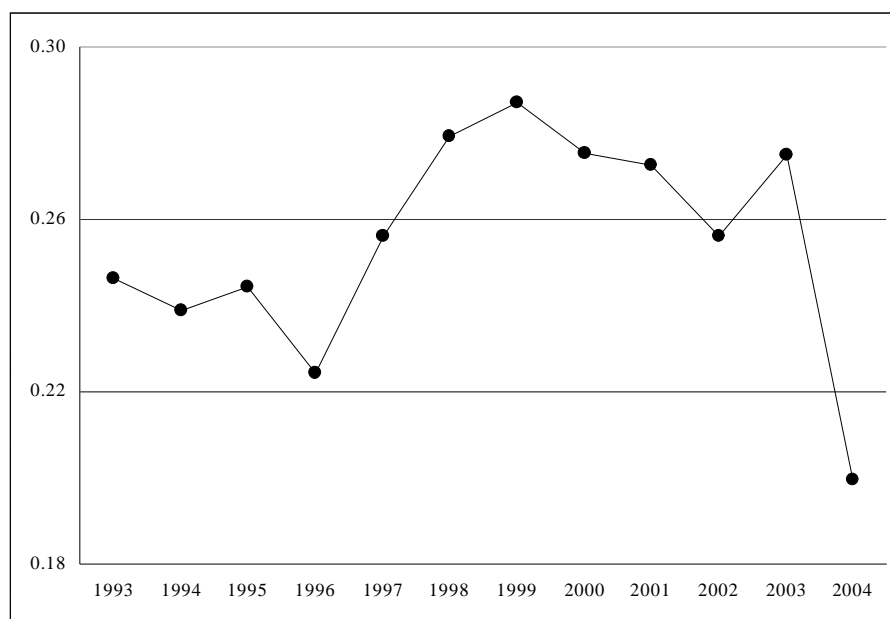
Source: ISL, *Shipping Statistics Yearbook 2005*.

6.4.2 National Carriage Rate

During the process of China maritime liberalization, its merchant fleets have apparently increased in both vessel numbers and tonnages. However, the defined indicator NCR makes the examination on maritime development more profound, as its main function is to observe the capacity of a nation's merchant vessels against its waterborne trade volume.

In the year 2002, the NCR of China was the second lowest ($=0.25$) among the nine selected nations (see Figure 3-1), which reflects the inadequate development of its maritime industry from one aspect.

Figure 6 - 5 China National Carriage Rate (1993 – 2004)



Source: National Bureau of Statistics, *China Statistics Yearbook* 1996 – 2005, ISL Shipping Statistics Yearbook 1994 – 2005.

During the period 1993 to 2004, the waterborne trade volume of China has increased more than 90 per cent, from 979.38 million tons to 1973.94 million tons.²³ However, during the same period, the deadweight tons of the China flag merchant fleets only increased from 19,722 thousand tons to 23,178 thousand tons, with the increasing rate of about less than 18 per cent. Hence the NCR of China remained at a low level during the past 10 years with the summit point in 1999 (=0.287). Especially in year 2004, its NCR decreased about 30% comparing with the previous years to the bottom point (=0.199, see figure 6-5).

In accordance with the premise of the definition of NCR, the world standard level remains eternally to one, so the NCR of China is far lower than the average level, which reflects that

²³ National Bureau of Statistics, *China Statistics Yearbook* 1996 – 2005

the increasing of Chinese flag merchant fleets can not catch up with the development of its waterborne trade volume. The situation of lower NCR in China maritime industry reveals that large quantity of its waterborne cargo is transported by foreign flag vessels and on the other hand, the decreasing tendency of the NCR illuminates that China is lack of encouraging policies for the development of national maritime industry.

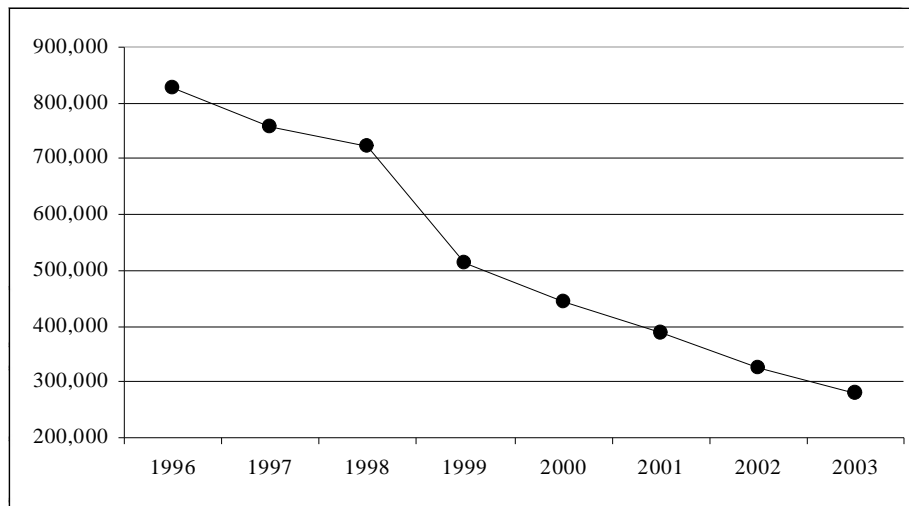
6.4.3 National Seafarer Employment Rate

Although the Article 7 of the *Regulations of the PRC on Vessels Registration Administration* regulates that “ships of Chinese nationality shall be manned by Chinese citizens”²⁴, after the promulgation of this regulation, in despite of the steady proportion (which is about 2.7%) of deadweight tonnages of Chinese flag vessels to the world total dwt, its waterway transportation employment yet declined sharply from 828,000 in 1996 to 281,451 in 2003, as shown in the Figure 6-6.

²⁴ Article 7 also provides an exceptional situation, which states that “in case it is necessary to recruit foreign seafarers, their employment shall be approved by the competent authority of communications under the State Council.”

Regulations of the PRC on Vessels Registration Administration, promulgated by the State Council on 2 June 1994 and effective as of 1 January 1995, art. 7.

Figure 6 - 6 Employment of China Waterway Transportation (1996-2003)



Source: National Bureau of Statistics, *China Statistics Yearbook* 1996 – 2005.

Having recognized the importance of national employment, China initiates a fixed proportion of national requirement on waterway employment in the *Interim Provisional Regulations on the Examination and Approval of Wholly-Foreign-Owned Shipping Companies*, which requires that “Chinese employees must account for at least 85% of the whole in the wholly foreign-owned company”.²⁵

The continuous declination in China waterway transportation employment²⁶ is probably attributable to several reasons. First of all, the flagging out trend of China in 1990s made China – flag vessels decreased every year²⁷ and most foreign flag vessels plying in international shipping lines usually employ foreign seafarers, e.g. Indonesia, for cost consideration. Second, after China economic reform, state-controlled maritime enterprises

²⁵ Interim Provisional Regulations on the Examination and Approval of Wholly-Foreign-Owned Shipping Companies, art. 12.

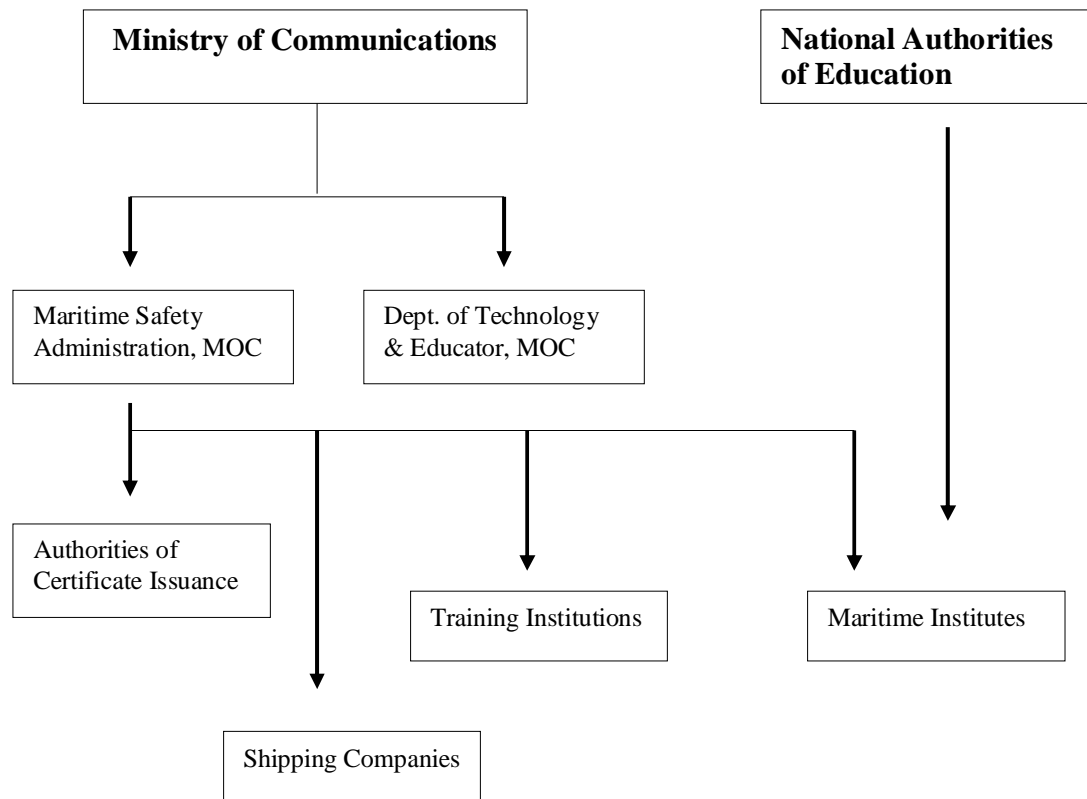
²⁶ Because the statistics of world seafarers is unavailable during this period, the NSER cannot be calculated. So this sector observes the situation of China seafarer employment by its national statistics.

²⁷ The flagging out trend of China – flag vessels will be discussed in the Chapter 7 in detail.

endured a privatizing course and in order to make more profits, as well as save operation costs, most of these maritime enterprises reduced their staffs. Third, because China did not apply any staid requirements of national employments on maritime industry in the past, the operation cost then becomes the most important consideration to maritime entrepreneurs.

On the other hand, the China seafarer training system developed dramatically in the 1990s and has established a completed maritime educational system. Pursuant to relevant laws and regulations, the MOC is the competent authority of China maritime education and training and it has set up the technical standard for seafarer training. In order to implement industrial supervision and quality control, the MOC adopted a series of measures including the investment in educational facilities, evaluation system for maritime education and training, licensing system for training institutions, national examination for certification of competency for seafarers, and certification system of quality management for maritime institutes. By the end of 2005, China has totally 11 maritime institutes and 66 seafarer training institutions, which provide more than 7,000 seafarers to the market annually. Table 6-4 lays out the administrative structure of China maritime education and training.

Table 6 - 4 Administrative System of China Maritime Education and Training

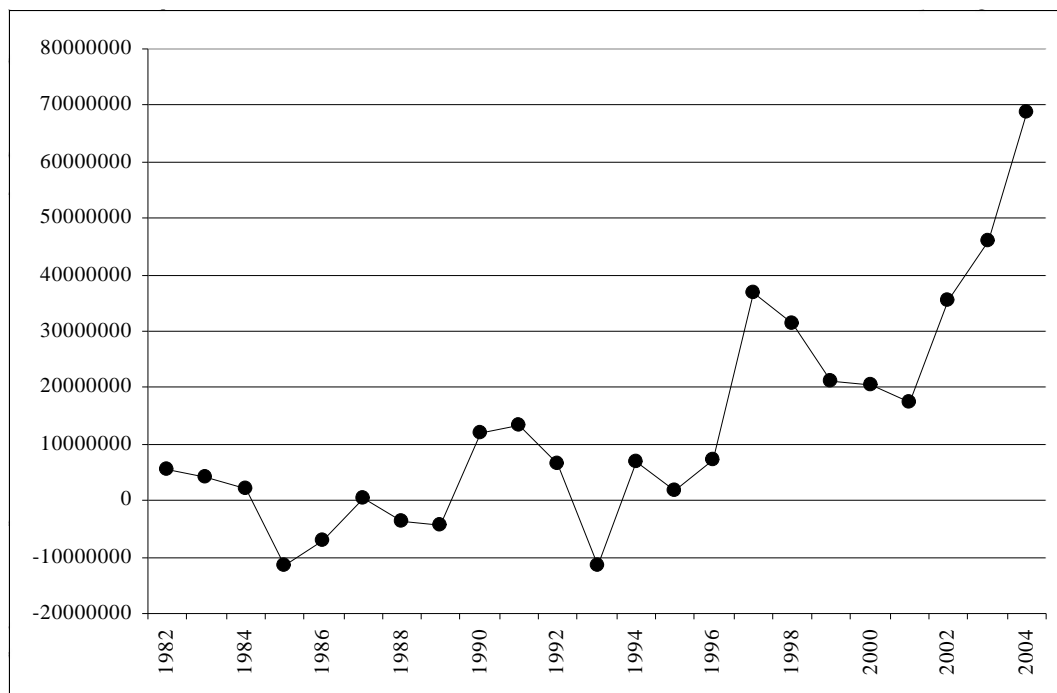


Maritime Safety Administrations of the MOC, as the authorities for certificate issuance, formulates several regulations to clarify the competency of certificate issuance. For example, the competency of 3/O requires a seafarer to serve on board at least eighteen months, while to apply the certificate of master, a seafarer must serve as C/O at least 18 months. Appendix 4 outlines the detail of China maritime education, training and certification system. The development of China maritime education and training increased the supply of seafarers and competition in employment of maritime industry, which requires a corresponding development of maritime industry to provide more opportunities for national seafarers.

6.4.4 Balance of Payments

Another defined indicator is balance of payment, a key element that affects the development of a country's maritime industry. According to the statistics of the World Bank, China has a increased surplus after 1994 and reached the summit in 2004, which was US\$ 68,659,160,000

Figure 6 - 7 China Balance of Payments (1982 – 2004)



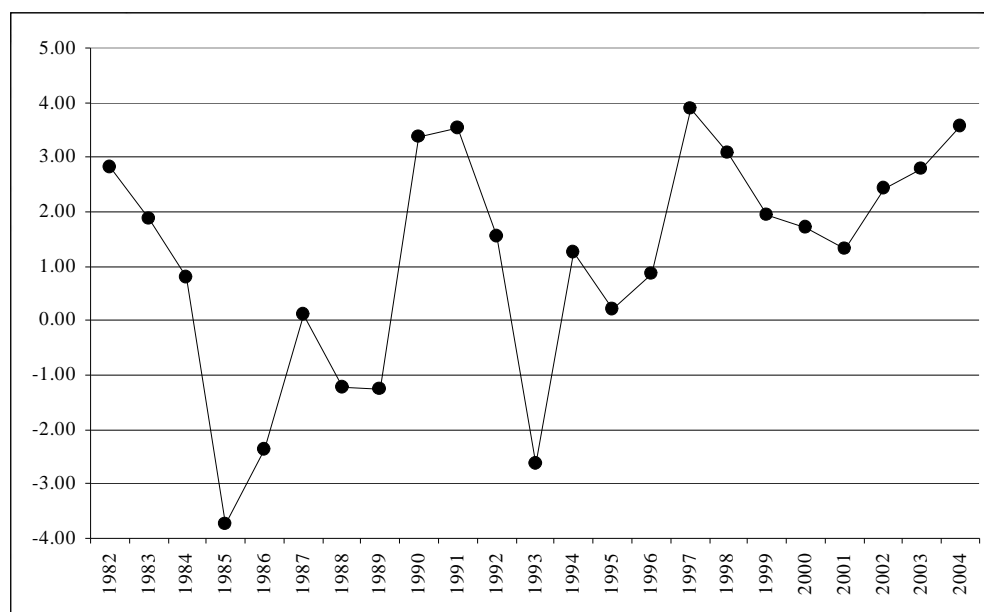
Source: IMF, World Development Indicators

After China economic reform and open up to the outside world²⁸, it becomes famous as the world plant and important producer to most developed countries. Due to the cheap

²⁸ For general information on China economic reform and “open door” policy, see Wu, Y. and Ye, Q. (1998), *China's Economic Reform and Economic Growth: Problems and Prospects*, Asia Pacific Press, Canberra; Dorn, J., Lin, J., Cai, F. and Li, Z. (1996), *The China Miracle: Development Strategy and Economic Reform*, Chinese University Press, Hong Kong; Howe, C., Kueh, Y. and Ash, R. (2000), *China's Economic Reform: A Study with Documents*, Curzon, Richmond, Surrey, U.K.

production and labor costs, China becomes an exporting country, both of merchandise and services. The surplus of China international trade continuously increased in the past 10 years, while its gross domestic products also kept increasing during the same course. As shown in the Figure 6-8, China BOP percentage of GDP remains relatively steady since 1982. This situation may be a good reason for China to process liberalizing maritime policy.

Figure 6 - 8 BOP Percentage of GDP (1982-2004)



Source: IMF, World Development Indicators

6.5 Empirical Study of China Maritime Policy

These general data of China maritime industry and the three defined economic indicators reveal that China maritime industry is not well – developed as it exhibits from the appearance. According to model established in the Chapter 3, the relation between national maritime policy and three defined economic indicators, i.e. NCR, NSER and BOP, shall be calculated by the following equation:

$$\text{MAR. POL}'Y = 2.561995 - 0.28069\text{NCR} + 1.55121\text{NSER} - 8.25133\text{BOP} +$$

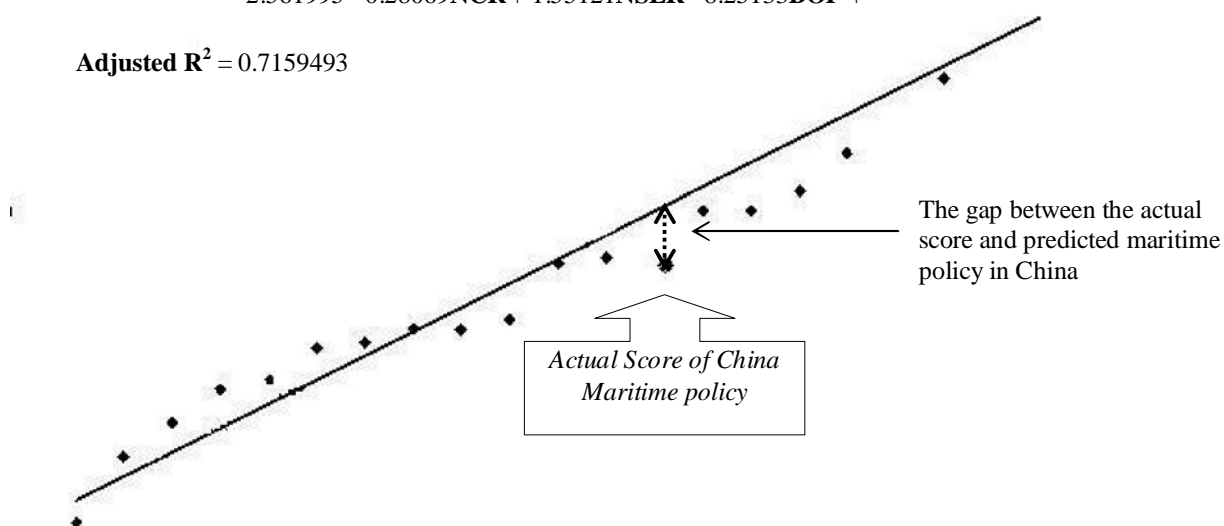
Through the application of this model to China case, whether its maritime policy is adaptable to the development of its maritime industry shall be examined.

According to this equation, the opening degree of China maritime policy in 2001 was ought to be 4.27, while the actual score was 3.75 in accordance with the analysis of index method. Figure 6-9 is developed on the basis of Figure 3-4, and reveals the gap (=0.62) between the actual degree of China maritime policy and the predicted maritime policy, which is calculated by the regression.

Figure 6 - 9 Actual and Predicted China Maritime Policy

$$\text{MAR. POL}'Y = 2.561995 - 0.28069\text{NCR} + 1.55121\text{NSER} - 8.25133\text{BOP} +$$

$$\text{Adjusted } R^2 = 0.7159493$$



This gap means that the maritime policy currently adopted by China is more liberal than the demand of its industrial development. In other statements, the developing status of China maritime industry requires a relatively more protectionism policy to facilitate its

development and the current maritime policy practicing in China may not satisfy this demand, as it is still in the immature phase.

6.6 Summary

Through the general analyses, China maritime industry is seemingly to develop dramatically since its economic reform observing from its appearance and some elementary maritime-related figures. However, when the observation goes into a deeper level, e.g. three defined economic indicators, and compares against the world situation, it disclose that the development of China maritime industry is not either well-liking, or satisfactory to the demand of its economic development and its increasing international trade as well. Although China BOP proportion to GDP remains steady in the past 10 years, its NCR has retained at a low level (< 0.3) during 1993-2004. At the same time, China waterway employment declined 66% since its reform in maritime industry. Above all, China maritime industry has developed neither rapidly nor exuberantly in the past ten years. Re-consideration and re-assessment shall be given to China maritime policy.

After all, liberalism and protectionism shall not be regarded as a pair of antithetical concepts, an optimum approach and more efforts are required for the formulation of national maritime policy. Optimum approach aims to explore a kind of maritime policy only considering the developing objectives of national maritime industry, regardless of protectionism or liberalism. The following Chapter will discuss this approach in detail incorporating China real situations and propose relevant legislative suggestions for the development of China maritime industry.

CHAPTER 7

AN OPTIMUM SOLUTION: SUGGESTIONS FOR CHINA MARITIME LEGISLATION

This Chapter applies the established model to China case. The empirical study reveals that the maritime policy currently practiced in China is more liberal benchmarked with the optimum maritime policy predicted by the model established in this research. In other words, China should consider adjusting its maritime policy by adopting some permissible support measures to foster the development of its national maritime industry. This Chapter systematically expatiates on a new approach for maritime policy making beside liberalism and protectionism, i.e., optimum solution. The aim of such an attempt is to avoid the insistence on either protectionism or liberalism, and to accomplish the developing objectives of national maritime industry. However, the new approach must fall into the elementary principle framework of the WTO in order not to create new trade barriers. Further suggestions for China maritime legislation are proposed adhering to this new approach.

7.1 Introduction

The statistics, which has already listed in the Chapter 6, on maritime data reflect the development of China's merchant fleets. But the deeper analysis of defined maritime indicators disclose that China's maritime industry cannot satisfy the demand of its international trade, and

at the same time its maritime policy is not propitious to the development of national merchant fleets.

In fact, China shall not be constrained to liberalism or protectionism during the formulation of maritime policy. It must make sure its policy objectives at first and then adopt policies that facilitate the accomplishments of these objectives. In contemporary major maritime nations, several kinds of support measures are very popular and China may take consideration of these measures and provide beneficial policies for its national maritime enterprises. For example, according to the analysis in the Chapter 4, cabotage is a common measure to protect a nation's domestic water transportation and the WTO negotiation group of maritime transport service consents to reserve this right to its members. At the same time, construction subsidies are very popular in major ship building nations, which ensure the development of ship building industry.

In general, liberalism and protectionism shall not be regarded as an either-or problem towards national maritime policy. A compromised approach – it can be named as *optimum maritime policy* – for maritime policy making may be taken into consideration. Such approach is a mixture of liberalism and protectionism with the sole objective to facilitate the development of national maritime industry. In the era of globalization, such compromised approach shall not only be consistent with the common principles of liberalization in international maritime practice, but also adopt some support measures, which are widely accepted by most maritime nations, to facilitate the development of its maritime industry concurrently. At the same time, such approach shall neither violate the basic framework of the anticipated WTO agreement on maritime transport services, nor neglect common practices in the world, especially the status quo of a specific nation's maritime industry. Subject to this premise,

this Chapter desires to propose several solutions for China maritime legislation, which are expected to eliminate the fundamental problems that hamper the further development of China maritime industry and facilitate the accomplishment of its development objectives.

7.2 Liberalism or Protectionism – A Way Forward

7.2.1 An Optimum Approach for Maritime Policy

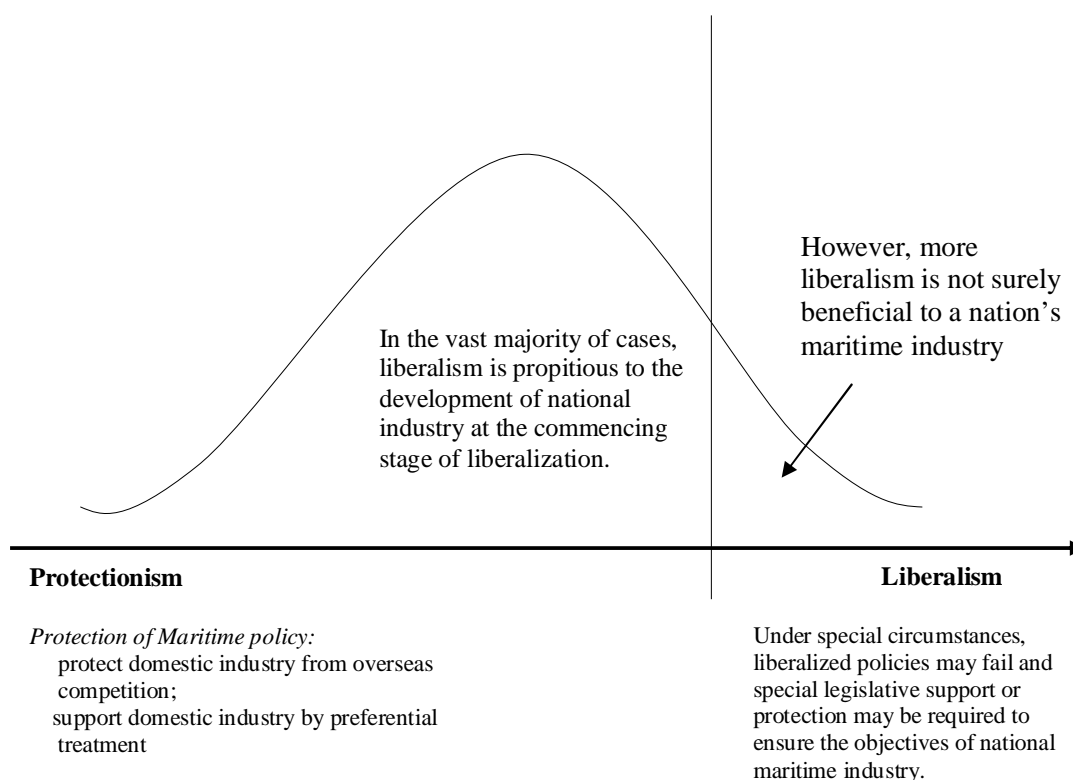
In the evolving history of maritime policy, liberalism and protectionism are regarded as a pair of antithetical concepts, and have gained too much attention. In fact, either liberalism or protectionism shall not be the fundamental issue that a nation concerns, because the chief function of a nation's maritime policy is to accomplish the developing objectives of its maritime industry. In *Confucian Analects*, a famous idiom says that “to go beyond is as wrong as to fall short¹”, which reflects the doctrine of the “mean” or the significance of ‘degree’. Neither liberalism nor protectionism is universally appropriate to a specific nation. Each nation shall explore a comprised maritime policy to facilitate its own maritime industry.

Figure 7-1 is developed on the research of Australian Centre for International Economics², which is originally used to demonstrate the impact of restrictions to competition on the community.

¹ Confucian, *Confucian Analects*, 11st Xian Jin.

² Centre for International Economics (1999), *Guidelines for National Competition Policy (NCP) Legislation Reviews*, prepared for the Australian National Competition Council, Canberra and Sydney: Centre for International Economics.

Figure 7 - 1 Impact of Liberalism to Maritime Industry

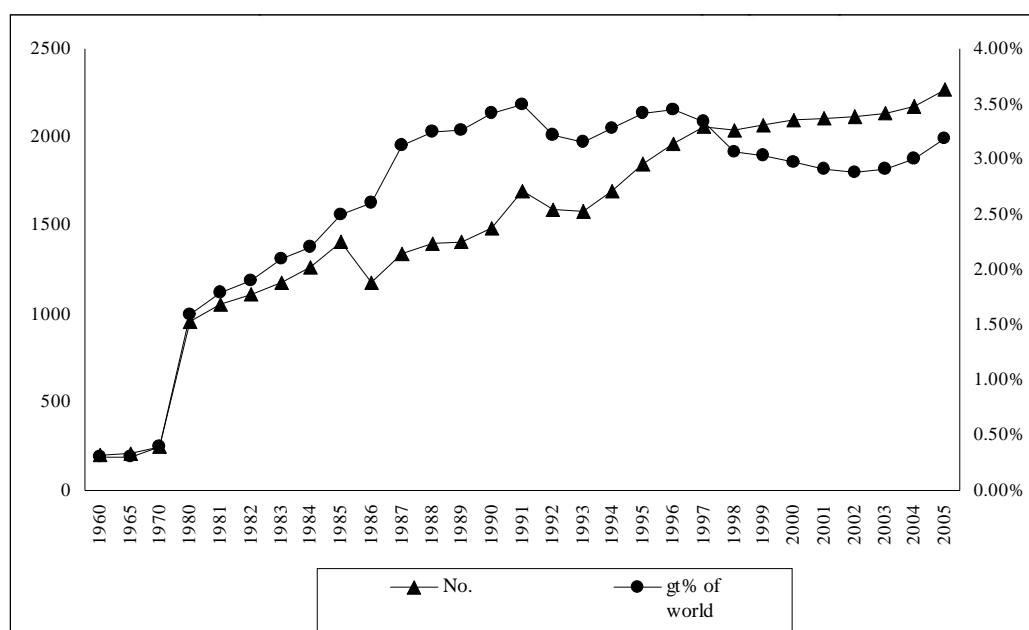


The statistics on China maritime industry illuminates that such theory is also applicable to the research of maritime policy. During the initial years after China's economic reform, it took a gradual liberalizing policy in maritime industry, and its merchant vessels received an accelerating development, where the number of national flag ships increased from 955 in 1980 to 2266 in 2005 and the total gross tonnages increased from 6,837,600 tons to 19,201,000 tons. However, China has commenced a comprehensive liberalization in maritime industry since 1992. From then on, the development of China maritime industry got into a low tide and cannot satisfy the demand of its economic development.

Figure 7-2 describes the development of China merchant fleets since 1960, which got a dramatically increasing after its economic reform in 1980 with its gross tonnage of the world total increased from 0.4% in 1970 to 3.5% in 1991. While after the further liberalization in 1992, the development of China flag fleets came into a stable stage and its gross tonnage proportion of the world total remains around 3% in the successive 10 years.

Figure 7 - 2 Development of China Merchant Fleets

(ships of 300gt and over)



Source: ISL, Shipping Statistics Yearbook 1988-2005

This situation testifies that – *measurable liberalization benefits the development of national maritime industry; however, excessive liberalization may handicap the further growth of maritime industry.* The track of liberalization of maritime industry shall close to a parabola and there is no fixed point for a specific nation that will be always adaptable to the development of its maritime industry. Each nation shall observe the developing stage of its

maritime industry, and explore an optimum maritime policy to accomplish its developing objectives. Therefore, during the formulation of national maritime policy, the crucial issue is to set out the developing objectives of its maritime industry. In accordance with these objectives, it then shall work out a set of appropriate maritime policy. Hence, the process of maritime policy-making is a dynamic course and a nation shall modify its policy constantly to satisfy the demand of its maritime industry. Such approach for maritime policy shall be regarded as an optimum maritime policy, which is propitious to accomplish its policy objectives.

Table 7 - 1 Maritime Policy Objectives of Selected Nations

Nation	Objectives of National Maritime policy
Australia	Enable access to more competitive and reliable shipping and waterfront services, for Australia's tradable goods and greater transparency, in the service delivery cost of ports and shore based cargo handling industries.
Indonesia	Access to more competitive and reliable shipping and waterfront services, greater transparency in costs, create economic, safe and reliable shipping services.
Iran	Providing competitive shipping services which are safe, reliable and efficient to meet the needs of the country and shipping.
New Zealand	To promote safe, efficient and environmentally sensitive shipping and promote and safeguard reliable competitive shipping services to the benefit of the economy.
Pakistan	To develop merchant shipping capable of providing effective and economical maritime and multimodal transport services to waterborne trade at optimum level. Provide job opportunities to seafarers, save foreign exchange and improve balance of payments, facilitate exports and imports of the country and neighboring landlocked countries. Expand national fleet to a size which matches a suitable high position among maritime nations.
Singapore	To promote Singapore as a premier port and international maritime centre and to safeguard the strategic maritime interests.
Thailand	To promote maritime business and related industries.

Turkey	To access more competitive and reliable shipping, promotion of Turkey at an international level and to facilitate access by Turkish shippers to competitive, safe and reliable international shipping services.
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Source: United Nations (1999), Framework for the Development of National Maritime policies.

Table 7-1 lists the maritime policy objectives of some maritime nations, and such objectives should have great instructive functions upon national maritime legislation. In China maritime laws and regulations, the objectives of China's maritime policy have been stated as: adaptable to the demand of foreign trade³ and international shipping⁴; facilitate the development of maritime transportation and international trade⁵; encourage and promote the development of international liner transportation⁶; protect fair competition and market order of international maritime transportation⁷; guarantee the legal interests of all parties to international maritime transportation⁸. Synthesizing these regulations, it shall come to the conclusion that China's maritime policy is closely associated with its development of maritime transportation and international trade as well, and then the broad objectives of China maritime policies shall be summarized as follows:

- To promote the development of China maritime industry, encouraging enterprises to compete in the international shipping market;

³ Regulations on the Administration of Maritime International Container Transport, promulgated by the State Council on 18 April 1998, and effective as of the same day, art. 1.

⁴ Regulations on the Administration of International Shipping Agency, promulgated by the MOC on 2 March 1990, and effective as of 1 April 1990, art. 1.

⁵ Maritime Law of the PRC, promulgated by the Standing Committee of the People's Congress on 17 November 1992, and effective as of 1 July 1993, art. 1.

⁶ Regulations on Management for International Liner Freight, promulgated by the MOC on 1 July 1990, and effective as of the same day, art. 1.

⁷ Regulations on International Maritime Transportation, promulgated by the State Council on 11 December 2001, and effective as of 1 January 2002, art. 1.

⁸ *Ibid.*

- To optimize the collation of the water transport resources, establish the fleet that could meet the demands of the development of the China economy, promote China maritime trade, profile the safe, reliable and efficient maritime services for Chinese tradable goods and shippers;
- To strengthen establishment of the legal system, form the environment of fair, reasonable and orderly competitive shipping markets of China.

So the adjustment of China's maritime policy must follow these objectives and take some effective measure to ensure the development of national merchant fleets.

7.2.2 Frontier for China Maritime Legislation – Application of WTO

Principles

Although the new approach points out a way forward for national maritime policy making, if China blindly adopts support measures for the development of national maritime industry, it would not only be in the opposite way of world liberalizing trend, but create new barriers for the undergoing WTO MTS negotiation. WTO has kept working on the liberalization of maritime services for about 20 years, therefore, promotional measures considering by China must fall into the framework of WTO general principles and the requirements of the negotiation on maritime transportation services as well. A moderate adjustment in China maritime policy shall not be in breach of the following four elementary principles, and contrapose the existing problems in the development of national maritime industry.

Application of “National Treatment” in China

This principle requires a WTO Member to “accord to foreign investors of any other Member State, in respect of all measures affecting the foreign investment, treatment no less favorable than that it accords to its own like investment”.⁹ By committing in the Protocol, China must accord foreign service providers no less favorable treatment than that accorded to its domestic individuals and enterprises. Specifically, national treatment is reflected in two aspects affecting foreign service providers. One is “the procurement of inputs and goods and services necessary for production and the conditions under which their goods are produced, marketed or sold in the domestic market and for export”¹⁰. The other is “the price and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production”¹¹. In both of these two situations, foreign investors shall gain the same treatment as their local competitors.

Regarding China maritime industry, national treatment mainly governs the maritime services sector, which comprises international maritime transportation, maritime auxiliary services, port services, tax policies and financial subsidies. It requires a nation to eliminate preferential treatment for national maritime enterprises or endow foreign service providers same treatment. As introduced in the Chapter 5, China has removed all kinds of subsidies and support measures since the 1980s and, at present, there is no form of subsidy available for waterborne transportation. For example, by the promulgation of the *Regulation of Port Charges*, the same level of port charges has been levied on foreign vessels as on vessels of

⁹ UNCTAD, *An Introduction to the WTO Agreements*, Law Press, Beijing China, p. 15.

¹⁰ Protocol on the Accession of the People’s Republic of China, art. 3 (a).

¹¹ *Ibid*, art. 3 (b).

the Chinese-flag fleet since 1992. On the other hand, in order to attract more foreign direct investment, China provides some supra-national treatment, which refers to more favorable treatments for foreign service providers than those endow to national citizens, to overseas investors. For example, enterprises with foreign investment will pay income tax at the rate of 30% on the taxable income of their establishments engaged in production or business operations in China. Local enterprises have to pay at the rate of 33%.¹² Such arrangement makes overseas service providers more competitive than their domestic competitors in China shipping market. So the adjustment in China maritime policy ought to consider removing these supra-national treatments, and make domestic and overseas maritime enterprises may compete on a fair ground.

Application of “Market Access” in China

Market access is an umbrella term for a number of measures that a nation may use to protect domestic industry. As regulated in the GATS, “each Member shall accord services and service suppliers of any other Member treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule ”¹³. The most common form of such restrictions is tariffs on imported goods and services as well. Non-tariff barriers to market access also exist for goods and services as well, such as technical standards, local content requirement, export performance, antidumping suits, import quotas, import licensing, and variable levies, among others. The GATS prohibits its members to maintain or adopt following measures either on the basis of a regional subdivision or on the basis of its entire territory.

¹² Income Tax Law for Enterprises with Foreign Investment, promulgated by the People’s Congress on 9 April 1991, and effective as of 1 July 1991, art. 5

¹³ General Agreement on Trade in Services, art. XVI (1)

- limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.¹⁴

This principle, in China maritime sector, mainly reflects in the restrictions on the access to domestic freight market and commercial existences, e.g., requirement of local content on foreign-invested enterprises, and the specific operational form for foreign-invested enterprises. The specific changes in China maritime policy relating to local market access

¹⁴ *Ibid*, art. XVI (2).

have been comprehensively analyzed in the Chapter 5. In accordance with its commitments to the WTO, China has gradually opened the international maritime transportation market, port industry and maritime auxiliary services market to overseas investors, and integrated these commitments into its new framework of maritime policy. For example, foreign investors are only allowed to engage in shipping agency services and cargo handling services through joint ventures and in the former, foreign investment shall not exceed 49%. In freight forwarding, foreign investment shall only account for 50% within the first year of implementation. Foreign majority investment and wholly-foreign-owned companies shall be permitted within one and three years respectively after China's accession date to the WTO.¹⁵ Therefore, to open domestic shipping market to overseas service providers is an irreversible trend for China, and moderate promotions for national maritime industry shall not violate China commitments to the WTO regarding the principle of market access.

Application of “Transparency” in China

“Each WTO Member shall publish promptly, and at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of WTO rules”¹⁶, such expression is known as the principle of *transparency*, which aims to prevent any WTO Member from applying any discriminatory measures and/or raising barriers to international trade by implementing laws and regulations that are unpublished. Transparency reflects the demand of trade liberalization and its objective is to avoid the WTO members to engage in un-public trade activities pursuant to its domestic laws and

¹⁵ Section 6, Item 6, Industrial Catalogue for Foreign Investors.

¹⁶ *Supra* note 13, art. III.

regulations, which may cause the substantial discrimination. The application of transparency principle shall urge the international trade to operate in a stable and foreseeable condition.

So all China laws, regulations, policies and administrative measures, which are relating to maritime industry, shall also publish promptly to follow the principle of transparency and avoid the unjust competition. China maritime authorities shall make the following policies transparent and exoteric to the public:

- laws, regulations and administrative rules governing the management and criterion of maritime transport services;
- tax law and policies relating to maritime transport services;
- support measures or policies to national maritime transport industry;
- navigational technique and security standard; and
- rules of vessel registration.

After accessing to the WTO, China has made great efforts in increasing the transparency of its legal system. An example in the *Regulations of International Maritime Transportation* is that in order to remove the unseen barriers, it specifically regulates the procedures that are necessary for overseas investors to follow in order to establish various kinds of shipping companies in China. The level of detail contained in this new legislation covers such issues as the documentation required, the relevant authorities, the reviewing period for the submission, the permitted scope of possible business activity and the specific activities that would be restricted should the application be approved (See Table 5-1). In fact, the principle of transparency is an organic part of the spirit of modern law, so it shall not be violated in

any situation. During the modulation of China maritime policy, any support measures to domestic maritime industry or protective measures for overseas service providers shall publish promptly and be made available to the public.

Application of “Progressive Liberalization” in China

The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing nations for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers¹⁷

This principle provides the possibility for China to reserve some protective measures in their economic policies. However, during the reform in China maritime policy, protective measures have been abolished in accordance with relevant policies issuance and such process lack of time for acclimatization. For example, cargo reservation was abolished in 1988 pursuant to the *Supplementary Notice on the Management of Reforming International Ocean Transportation*, and since then there is no restriction placed on the carriers of government cargoes in China. Hence, cargoes are transported under straightforward agreements between shipper and carrier following common commercial rules. But this transformation directly results in the decrease in the proportion of important cargoes, e.g. cargoes relating to national security, transported by China maritime enterprises. During the modulation of China maritime policy, it may consider making use of the principle of

¹⁷ *Supra* note 13, art. XIX (3).

“progressive liberalization” and re-adopting some common support measures to promote the development of national maritime industry.

Above all, these four elementary WTO principles are most relevant to China maritime transport services and neither of them shall take effects itself. These principles shall be regarded as a whole and interosculated. Market access and national treatment are two primary requirements for the liberalization of China maritime policy by the WTO, which set the minimum liberalizing standards for China maritime transport market. Transparency principle requires China to publish all its maritime laws, regulations and policies to the public, no matter they are liberalism policies or protectionism policies. And the progressive liberalization principle reserves a room for China to adopt some support measure for its national maritime industry.

Therefore, during the formulation of China maritime policy, it must in line with its policy objectives and the two WTO principles, i.e. market access and national treatment. While the WTO permits China to liberalize its maritime industry step by step and allows the application of some support measures for national maritime industry, China shall consider practicing support measures in order to accomplish its policy objectives as long as such measures do not violate the elementary requirements of the WTO in maritime industry. Furthermore, China shall remember to publish all its laws, regulations, policies relating to maritime matters to the public and ensure the transparency of these documents. Predicating on these analysis, the following sectors propose three measures to promote the development of its national maritime industry, which include:

- Elimination of Supra-National Treatment;

- Reservation of Security or Strategic Cargoes; and
- Consideration of Second Registry

All of these suggestions are consistent with the WTO principles and have substantial effects on the development of China's maritime industry. Each of these suggestions aims to resolve factual problems existing in China's maritime industry, which may be summarized as *lack of protection on national maritime service providers and excessive preferential treatments for foreign-invested enterprises*.

7.3 Elimination of Supra-National Treatment

National Treatment requires a WTO Member to “accord to foreign investors of any other Member State, in respect of all measures affecting the foreign investment, treatment no less favorable than that it accords to its own like investment”.¹⁸ However, in China policy framework, not only infra-national or national treatments are applied to foreign investors, but supra-national treatments are endowed, with the aim to attract overseas capital and advanced technology as well. By the end of 2005, a total of 552,942 foreign-invested enterprises have been approved to establish in China, and actual utilization of foreign capital has reached 63.81 billion US dollars.

¹⁸ *Supra* note 9 at 15.

7.3.1 Preferential Treatment in Taxation

The supra-national treatment is mainly reflected in the comprehensive preferential taxation system for foreign-invested enterprises¹⁹, and such preferential taxes are also applied to maritime enterprises.

In China, foreign-invested enterprises not only enjoy tax treatment generally equal to that of national enterprises, they also enjoy certain exclusive preferences. Pursuant to the *Income Tax Law for Enterprises with Foreign Investment*, enterprises with foreign investment and foreign enterprises shall pay income taxes in accordance with provisions of this law²⁰. "Enterprises with foreign investment" include Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures and wholly foreign-owned enterprises that are established in China. "Foreign enterprises" mean foreign companies, enterprises and other economic organizations which have establishments or places in China and engage in production or business operations, and which, though without establishments or places in China, have income from sources within China²¹. The broad range of parties, who shall enjoy the preferential tax treatment, make almost all foreign-related enterprises shall pay a lower income tax than local counterworkers in China.

In general, enterprises with foreign investment owed income tax at the rate of 30% on the taxable income of their establishments engaged in production or business operations in China. Local enterprises, on the other hand, owed at the rate of 33%.²² In addition, the preferential tax for foreign investors is more regional than industrial or technical and

¹⁹ In China, almost all the coastal provinces and important cities have promulgated specific policies to attract foreign investment, which include Beijing, Shanghai, Tianjin, Liaoning, Hebei, Shandong, Jiangsu, Zhejiang, Fujian, Guangdong, Guangxi, Hainan, Shenzhen, Xiamen, and Qingdao.

²⁰ *Supra* note 12, art. 1.

²¹ *Supra* note 12, art. 2.

²² *Supra* note 12, art. 5.

convergent in coastal areas. For example, enterprises engaged in production or business operations and foreign-invested production enterprises in Economic and Technological Development Zones (ETDZs) can enjoy a reduced rate of 15%.²³ In addition, the income tax on foreign-invested production enterprises established in coastal economic open zones or in the old urban districts of cities where the SEZs or ETDZs are located, is levied at the reduced rate 24 percent.²⁴ Furthermore, if foreign investors invested in specified sectors (e.g. high technology, production-oriented industry, etc.), they could be exempted from tax liabilities for the first three years following establishment and then have tax levied at a rate of only 15% in the fourth and fifth years of operation.²⁵

In the year 2005, the amount of income tax collected from foreign-invested enterprises reached about US\$ 114,769,320,000 and accounted for 3.72 percent of the whole tax income of China.²⁶

7.3.2 Other Preferential Treatments for Oversea Investors

Pursuant to the *Implementing Rules for the Law of the PRC on Chinese-Foreign Equity Joint Ventures*, “the registered capital of a joint venture refers to the total amount of investment registered at the registration administration office for the establishment of the joint venture. It shall be the total amount of investment subscribed by all parties to the joint venture”²⁷. The *Implementing Rules for the Law of the PRC on Wholly Foreign-Owned Enterprises* also

²³ *Supra* note 12, art. 7 (1).

²⁴ *Supra* note 12, art. 7 (2).

²⁵ *Supra* note 12, art. 8.

²⁶ State Administration of Taxation, *Statistics on Tax*, available at <http://www.chinatax.gov.cn/data.jsp>, (last visited August 1, 2006).

²⁷ *Implementing Rules for the Law of the PRC on Chinese-Foreign Equity Joint Ventures*, revised by the State Council on 22 July 2001, and effective as of the same day, art. 18.

has the similar regulations²⁸. While in the *Company Law of the PRC*, the definition of the “registered capital” is almost the same, but it specifically regulates the proportion of the initial capital shall be made and the time arrangement for the payment of the margin²⁹. Comparing between these two provisions, it may be found that the requirements for the initial capital and payment arrangement on the foreign investors are more inexplicit and loose than those on their domestic rival. The original aim of these regulations is to provide more flexibility for foreign investors and associate with international tradition. But in practice, some foreign investors do not deliver the currencies or property, or do not effect the transfer of property rights, or falsely deliver the capital contributions, or withdraw the capital contributions after the company has been established, by utilization of this legal discrepancy. Pursuant to the regulations in the laws governing foreign-invested enterprises, the board of directors is the superior authority for foreign-invested enterprises and the shareholder’s meeting is not required.³⁰ But the functions of the board of directors in the foreign-invested enterprises³¹ are consistent with the rights of the shareholders’ meeting and the board of

²⁸ *Implementing Rules for the Law of the PRC on Wholly Foreign-Owned Enterprises*, revised by the State Council on 12 April 2001, and effective as of the same day, art. 20.

²⁹ The registered capital of a limited liability company shall be the total amount of the capital contributions subscribed to by all the shareholders that have registered in the company registration authority. The amount of the initial capital contributions made by all shareholders shall be not less than 20% of the registered capital, nor less than the statutory minimum amount of registered capital, and the margin shall be paid off by the shareholders within 2 years as of the day when the company is established; as for an investment company, it may be paid off within 5 years. The minimum amount of registered capital of a limited liability company shall be RMB 30,000 Yuan. If any law or administrative regulation prescribes a relatively higher minimum amount of registered capital of a limited liability company, the provisions of that law or administrative regulation shall be followed.

The Company Law of the PRC, revised by the People’s Congress on 27 October 2005 and effective as of 1 January 2006, art. 26.

³⁰ Law of the PRC on Chinese-Foreign Equity Joint Ventures, revised by the People’s Congress on 15 March 2001, and effective as of the same day, art. 6; Law of the PRC on Chinese-Foreign Contractual Joint Ventures, revised by the People’s Congress on 31 October 2000, and effective as of the same day, art. 12.

³¹ *Implementing Rules for the Law of the PRC on Chinese-Foreign Contractual Joint Ventures*, revised by the Ministry of the Foreign Trade and Economic Cooperation on 4 September, 1995, and effective as of the same day, art. 29; and *supra* note 27, art.36.

directors regulated in the *Company Law*³². And additionally, there is no requirement on foreign-invested enterprises to establish the board of supervisors, which is an obligatory authority in Chinese enterprises regulated in the *Company Law*. This makes the power of the board of directors in foreign-invested enterprises is too centralized and may not make for the interests of all investors to the enterprises.

7.3.3 Common Practices in Japan and South Korea

In the year 2001, China attracted a record level of foreign direct investment at USD 46.84 billion. In the same year, South Korea only attracted USD 11.87 billion, less than 1/4 of the amount of China.

For foreign-invested enterprises established in Korean free tariff zones, they shall be exempted from the income tax for the first 7 years, and be levied at a 50 per cent off tax rate in the following 3 years. In Japan, foreign-invested enterprises are exempted from Special Land Reservation Tax and shall loan from Development Bank of China with a low interest.

Comparing with these two counterparts, supra-national treatments for foreign-invested enterprises provided by Chinese government are more comprehensive and preferential.

7.3.4 Ongoing Reform

The preferential treatment for foreign investors impels many Chinese-owned enterprises to seek their overseas cooperators, so that they may establish joint ventures in China and enjoy

³² *Supra note 29*, art. 38 and 47.

these preferential treatments. This results in the emergence of large quantities of Sino-foreign joint ventures or offshore enterprises in maritime sector. The differential treatments between overseas and national enterprises make Chinese practitioners be lack of capability for competition. Hence, the primary objective of elimination of preferential treatments over foreign investors is to make all the enterprises to compete on a fair ground.

At the same time, in accordance with the requirement of national treatment, the elimination of such regulations that give favorable treatment to foreign investors shall no be in breach of the principles of the WTO. This means that tax rates faced by both foreign and domestic enterprises should be the same. In April 2001 the State Council approved the abolition of the preferential policy whereby the income of newly established foreign-invested enterprises or high technology enterprises with foreign investment derived from an SEZ (including Pudong New Zone, Shanghai and Suzhou Industrial Zone) was exempted from sales tax for five years after registration. The abolition of this benefit may be regarded as a signal that the differential treatment between overseas and domestic investors has already been under consideration of relevant China authorities. In the following few years, preferential policies for foreign investors will be gradually removed and foreign investors will no longer enjoy this kind of favorable treatment.

In the press conference held by the *State Council* on January 17 2006, the General Director of the *State Administration of Taxation* comprehensively expatiated on the forthcoming *Reform on Enterprises Income Tax*. The income tax over foreign-invested enterprises and domestic enterprises shall be unified into a Uniform Enterprise Income Tax Law, and a uniform and fair income taxation system will be established. The objectives of the tax

reform are to create a tax condition for fair competition, to enhance the utilization of foreign capital, to optimize the structure of national economy, to accelerate the development of industry and technology, to promote the sustaining, stable, healthy development of national economy. In his introduction, Chinese government will uniformly reduce the income tax from 33 percent to about 24-27 percent for all enterprises.³³

These measures and possible transformation reveal that Chinese government has already recognized the problems and weakness existing in current policy framework. Various kinds of preferential treatments endowed to foreign investors make domestic enterprises be lack of capability of competition and directly lead national maritime enterprises to seek their overseas cooperators or to establish offshore enterprises and then come back to invest in China as foreign-invested enterprises, so that they may enjoy the same treatment as their overseas counterworkers. The elimination of these preferential treatments shall provide a fair operating environment for all maritime enterprises and attract some domestic maritime operators to come back, but one issue shall be aware that such measure may make China be less attractive for foreign investors.

7.4 Security or Strategic Cargo Reservation

Before the 1990s, China's demand for oil could be satisfied by its own production, and its oil market was largely isolated from the rest of the world. With the dramatic economic development in successive years, China's oil demand increased sharply, and the nation

³³ Available at http://www.gov.cn/xwfb/2006-01/17/content_161580.htm, (last visited August 1, 2006)

became a net importer of crude oil in 1996. In 2003 it, for the first time, overtook Japan to become the second-largest petroleum consumer after the United States³⁴.

7.4.1 The Increasing Demand of China Energy Import

The development goal set by National Development and Reform Commission states that China aims to quadruple its GDP figure for 2000 GDP by 2020, build a "well-off" society, and generally achieve industrialization³⁵. During this course of development, energy will play an essential role, so that the ways in which energy is exploited, converted, and used will have a great impact on China environment, public health, and economic and social development.

According to the China Statistical Yearbook, coal is the main source of energy used in China, accounting for more than 68%³⁶ of total energy consumption. However, with rapid economic development, especially after 1990, crude oil is becoming more and more important for China'. In 2004, it constituted 22.7%³⁷ of the total amount of energy used in the nation. According to the Energy Information Administration ("EIA"), China's oil imports will increase from today's roughly two million barrels per day to nearly eight million in 2025, or to sixty per cent of China's total oil consumption³⁸. The International Energy Agency ("IEA") expects China's oil imports to double to four million barrels per day by 2010 and reach ten million barrels per day by 2030, which is almost equivalent to the net imports of

³⁴ US Energy Information Administration (2004), *available at* <http://www.eia.doe.gov/emeu/cabs/china.html>, (last visited August 1, 2006).

³⁵ Dai, Y. (2003), *China's Energy Demand Scenarios for 2020*, China Development Forum 2003.

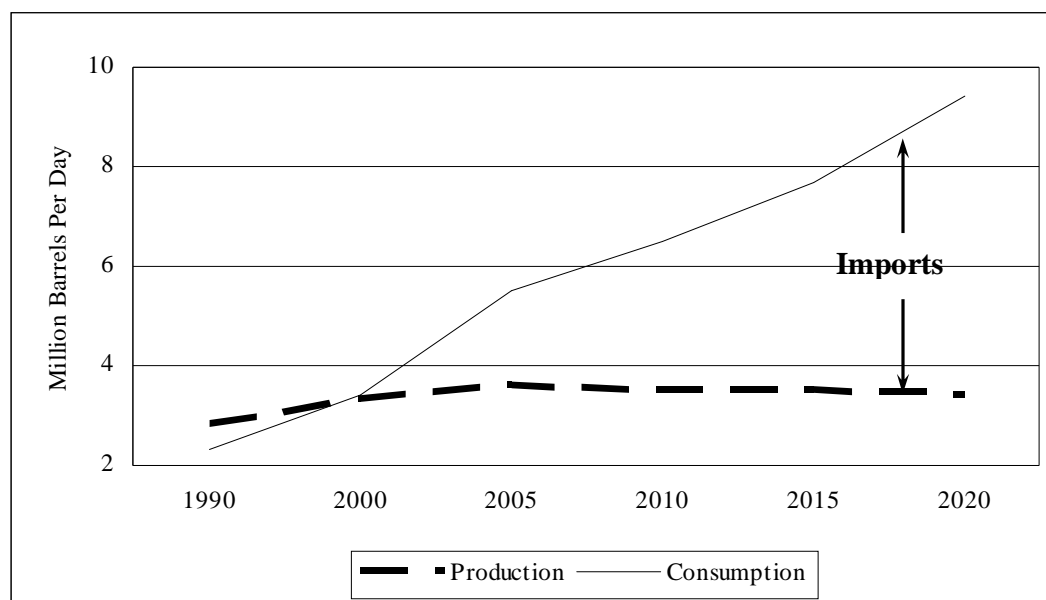
³⁶ National Bureau of Statistics (2006), *Statistics Yearbook 2005*.

³⁷ *Ibid.*

³⁸ U.S. - China Economic and Security Review Commission, *2004 Report to Congress*, *available at* <http://www.uscc.gov>, (last visited August 1, 2006)

the United States in 2000³⁹. The following figure shows the increasing gap between China's oil production and consumption, which predicts that in year 2020, China's daily oil import demands will reach about 4-5 million barrels.

Figure 7 - 3 China's Projected Oil Production vs. Consumption (1990 - 2025)



Source: International Energy Outlook 2004

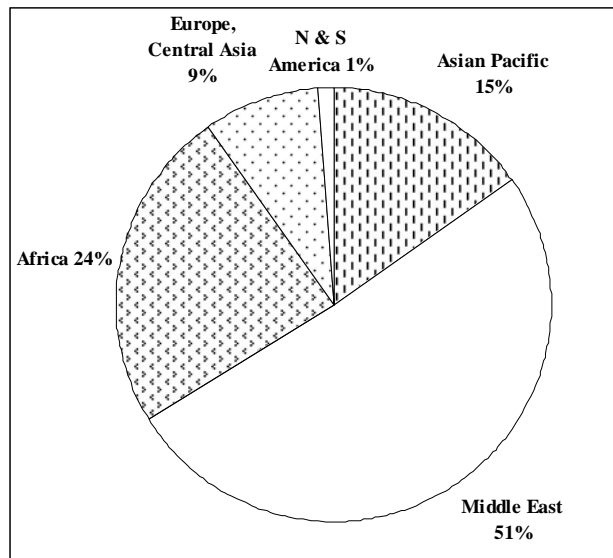
The Middle East and Africa are the main areas from which China imports crude oil, accounting for 51% and 24% of China's total oil imports in 2003⁴⁰. To reduce its dependence the Middle East, China is looking for additional sources of oil and gas in Indonesia, Burma, Venezuela, Peru, and Canada. In the Middle East, China is pressing for access to reserves in Iran, the second-largest exporter in the Organization of Petroleum Exporting Nations ("OPEC"), after Saudi Arabia. In 2004, China state oil companies also made investments or

³⁹ IEA, *World Energy Outlook 2002*, p. 253.

⁴⁰ Customs General Administration (2004), *China Customs Statistics Yearbook 2003*.

struck deals for future investment in Algeria, Azerbaijan, Ecuador, Kazakhstan, Myanmar, Thailand, and Venezuela.

Figure 7 - 4 China Oil Imports by Region 2001



Source: China Customs Statistics Yearbook 2003

Another area of vulnerability in China's oil strategy is that China is the world's largest economy to lack a meaningful strategic petroleum reserve – 21 days, compared to the United States' 158, Japan's 169, Germany's 117, and France's 96⁴¹. This means that China must continuously import oil and, therefore, the security of China's oil transportation is a critical issue in its economic development. The increasing demand on crude oil import has logically brought more opportunities for ocean transport, but in the year 2004, of about 912.5 million barrels China imported oil, only 10 percent⁴² was carried by China flag vessels, while 80

⁴¹ Lu, H. *A Survey on the Construction of China's Strategic Petroleum Reserve Base*, a copy can be obtained from http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/world/2004-07/22/content_1626607.htm, (last visited August 1, 2006)

⁴² <http://www.sina.net>

percent of Japan imported oil was transported by Japanese flag vessels⁴³, which indicated the insufficient development of China oil tankers.

7.4.2 Common Practices in Major Maritime Nations

Strategic cargoes, e.g. crude oil, natural gas, iron ore, and etc. are different from other common economic cargoes, as they are closely associated with the economic development and national security as well. If a large proportion of a nation's strategic cargoes were transported by foreign controlled vessels, such nation might confront security risk in time of emergency, so a lot of super powers reserve strategic cargoes to their national flag vessels.

In Japan, governmental cargoes must be transported by Japan-flag vessels and foreign ships shall not be invited for bidding. Major Japan Steel plants and companies have established a close relationship with Japanese shipping companies, by form of inter-investment or long term agreement. Such arrangement ensure the large proportion of strategic cargoes to be transported by Japanese flag vessels⁴⁴

As introduced in the Chapter 3, the US also reserves four kinds of cargoes to national flag vessels, which include cargoes procured for or owned by US military departments and defense agencies, cargoes financed by the US Bank of Import & Export, cargoes for international aid, and 50 percent of all Government-impelled cargo⁴⁵.

⁴³ [http:// www.jctrans.com/](http://www.jctrans.com/)

⁴⁴ Ministry of Land, Infrastructure and Transport of Japan (2005), *Report on Maritime Affairs (Summary)*.

⁴⁵ US Department of Transportation Maritime Administration (2004), *Maritime Administration Annual Report to Congress Fiscal Year 2004*, MARAD.

Singapore and South Korea also require cargoes for national defense or of strategic importance, e.g. crude oil, iron ore, and liquefied natural gas, to be transported national flag vessels. These nations desire to ensure their national security and make their national flag vessels to reserve a certain volume of cargoes to transport through the application of strategic cargo reservation.

7.4.3 Ongoing Reform

In the initial years after China economic reform, Chinese government required that at least 60-65 percent of China import and export cargoes must be transported by national flag vessels⁴⁶, which made the development of national merchant fleets at that time. But after the abolishment of all cargo preference measures in 1988, China flag vessels did no longer have any preferential right in governmental cargoes. In the successive years, the structure of China merchant fleets became less rational in accordance with its cargo structure. The largest proportion of China merchant fleets was bulk carriers in 2005, which accounted for about 55% of total deadweight tonnages, while the proportion of tankers was less than 20%. In the same year, tankers occupied more than 40% of the world total deadweight tonnages. In 2005, the total deadweight tons of China flag oil tankers were about 5,890 thousand and only accounted for 1.7 percent of the world total. As forecasting by the National Bureau of Statistics, the annual transportation capability of China flag oil tanker is only about 30 million to 40 million tons, which can only carry about 25% to 33% of China total oil import.

⁴⁶ *Notice on Reform of the Management of International Maritime Transportation*, issued by the State Council in 1984.

In the currently drafting *Shipping Law*, which would regulate the national maritime industry, Chinese government has already recognized the importance of strategic cargo reservation. To reserve strategic cargoes to national flag vessels shall not only ensure the national security in time of emergency, but promote the development of national flag merchant fleets. In the premise of transparency, China would consider to allocate strategic cargoes, e.g. crude oil, iron ore, to national flag vessels. The coming *Shipping Law* would possibly illustrate the specific types of cargoes, which belong to strategic materials, and the proportion reserving to national fleets.⁴⁷ Although such preferential measures for national merchant fleets may infringe the principle of national treatment, China may utilize the principle of progressive liberalization to require an exemption upon this issue. It shall also be noticed that such measure must be in accordance with principle of transparency, in other words, China must specifically illuminate the cargo preference measure, including the classifications of strategic cargoes, specific proportion for national merchant fleets, any exceptions for such preferential arrangement.

7.5 Reform on Shipping Registration – Solution for Flagging-out

The trend of flagging out, which may be simply understood as the ‘change of a vessel’s registry from an expensive to a cheap flag⁴⁸’, has been a global wide phenomenon for a long time. This trend imposes a great negative impact on traditional maritime nations, because their flag vessels gradually flagged out in order to reduce operating costs and financial pressures. China, as a developing maritime nation, also confronted this problem in the 1990s.

⁴⁷ News Press by the MOC, available at <<http://www.moc.gov.cn/>>.

⁴⁸ Haralambides, H. E. and Yang, J. (2003), *A Fuzzy Set Theory Approach to Flagging Out: towards a new Chinese maritime policy*, Marine Policy, 27, pp. 13-22.

7.5.1 The Flagging-out Trend of China in 1990s

By the end of 1994, the number of vessels that flagged Chinese flag was 1,298, corresponding to 20,319 thousand dwt⁴⁹. In the same year, the total number of foreign flag vessels controlled by China was only 246 with 8,726 thousand dwt⁵⁰. It is obviously that the national flag vessels occupied a proportion about 70% of all the dead-weight tonnage of China controlled merchant fleets and the foreign flag vessels only accounted for less than 20%. But with the trend of flagging out, more and more China controlled vessels registered in the flag of convenience (FOC) nations in order to reduce their operational cost and seek more operational flexibility. By the end of 2005, the number of Chinese flag vessels remained nearly the same as of the year 1994, which was 1,471 and corresponding to 26,241 thousand dwt⁵¹. But the number of foreign flag vessels that controlled by China increased sharply to 884 and equaled to 27,900 thousand dwt, which exceed the deadweight tonnage of national flag vessels. The proportion of China flag vessels only accounted 48.5 % of all China controlled tonnages, while the foreign flag vessels occupied more than 50% of all the tonnages. Figure 7-5 clearly illustrated this trend during 1994-2005.

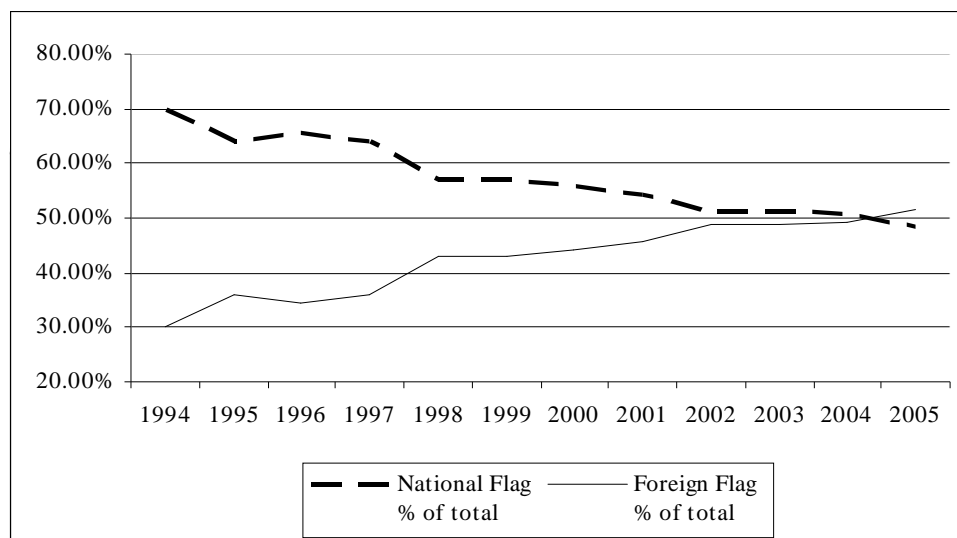
⁴⁹ ISL, *Shipping Statistics Yearbook 1995*.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Figure 7 - 5 DWT of China Controlled Fleets 1994-2005

(National Flag v. Foreign Flag)



Source: ISL, Shipping Statistics Yearbook 1995-2005

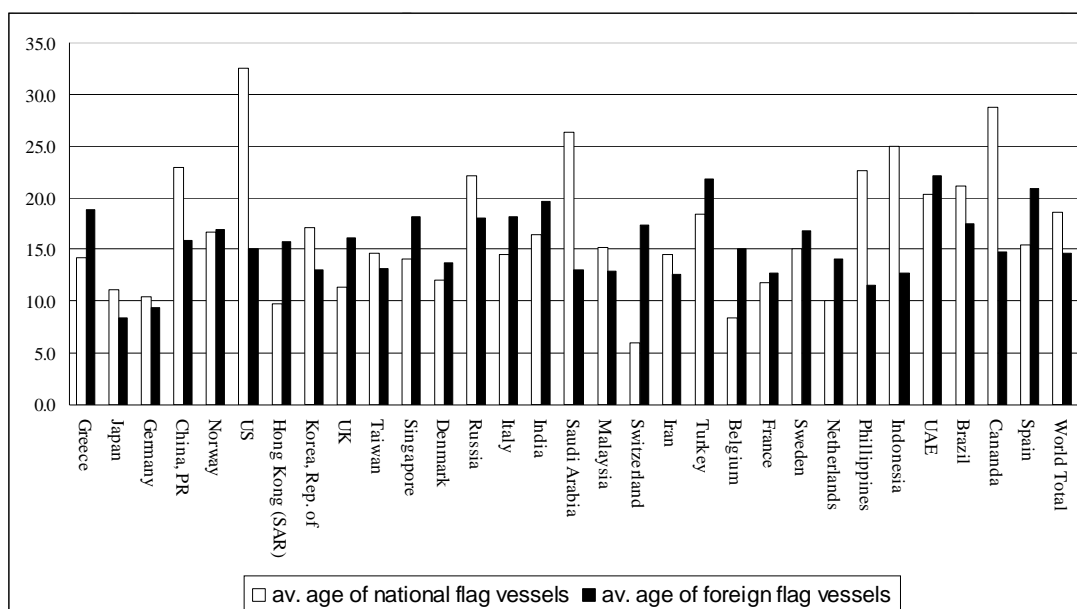
The flagging out trend in China emerged concurrently with the gradual liberalization of China maritime policy, which removed almost all support measure to national flag vessels and imposed preferential treatments for foreign investors. For instance, such measures included (a) high tariffs and value added taxes on imported ships and (b) industrial carriage: shippers registering their own tonnage abroad to avoid stringent company laws, shipbuilding and trading regulations and other limitations imposed on national flag ships⁵².

The trend of flagging out does not only cause the decrease of numbers and capacities, but results in the aging problem of national flag vessels. In the year 2005, the average age of national registered ships was 18.6 comparing with 14.7 years of foreign flag vessels. Among the top 30 maritime nations and territories in the statistics yearbook of ISL, only a half had

⁵² *Supra* note 48.

an average age of national flag vessels younger than their flagged out counterparts⁵³. As shown in the figure 7-6, the average age of world national flag vessels was almost 4 years older than flagged out vessels.

**Figure 7 - 6 Average Age of Top 30 Maritime Nations 2005
(National Flag v. Foreign Flag)**

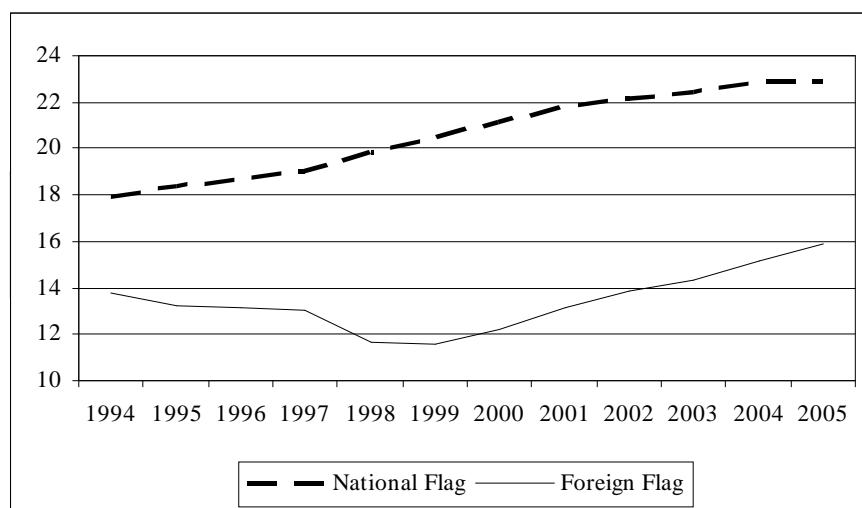


Source: ISL, Shipping Statistics Yearbook 1995-2005

Figure 7-6 illustrates the variation of average age of Chinese flag vessels and China controlled foreign flag vessels. During the past 10 years, the Chinese flag vessels got older with a rate of 29 percent, where the rate of China controlled foreign flag vessels was only 15%.

⁵³ These nations include Greece, Norway, Hong Kong, UK, Singapore, Denmark, Italy, India, Switzerland, Turkey, Belgium, France, Sweden, Netherlands, UAE, and Spain.
Supra note 49.

**Figure 7 - 7 Ship Age of China Controlled Fleets 1994-2005
(National Flag v. Foreign Flag)**



Source: ISL, Shipping Statistics Yearbook 1995-2005

In the year of 2005, the average age of China merchant fleets was 22.9 years, where in the year 1994 the average age was only 17.9. Amongst them, the detailed average ages of specific vessels are tankers 20.3, bulk carriers 22.6, general cargo ships 25.5, container vessels 14.5, and passenger/passenger cargo ships 23.9⁵⁴. On the contrary, the average age of foreign flag vessel under Chinese control was only 15.9 years, comparing to the average age 13.8 in 1994. Amongst them, the detailed average ages of specific vessels are tankers 13.0, bulk carriers 14.2, general cargo ships 20.0, container vessels 10.5, and passenger/passenger cargo ships 17.7⁵⁵. These figures reveal that all kinds of Chinese flag vessels confronted the aging problem and 5 to 7 years older than China controlled foreign flag fleets.

The widespread flagging out phenomenon, affecting not only the merchant fleets of the vast majority of the traditional maritime nations but also the new developing maritime nations,

⁵⁴ ISL (2005), *Shipping Statistics and Market Review*, Vol. 49 No. 4.

⁵⁵ *Ibid.*

has attracted a great deal of attention for a variety of reasons⁵⁶. The flagging out trend in China has a tight inter-relation with the insufficient development of national maritime industry. The decrease of national flag vessels limited the national controlled transportation capacity and resulted in the declination of fiscal revenue in maritime industry as well as employment of national seafarers, and latent threat for national defense in time of emergency. To solve this issue and attract more national controlled vessels back to register under China flag will assist to handle the insufficient development mentioned above and accomplish the objectives of China maritime policy.

7.5.2 Three Major Types of Ship Registration

Closed Registration

In the international law, all ships, as a special movable property, must be listed in national shipping registers, vessels have to fly the flag of the nation in which they are listed, and the individual states have the sole responsibility for regulating the ships' activities. Closed registration, also known as restricted registration or national registration, are the ones that set requirements on ownership, management and manning of a vessel to be registered⁵⁷. Registration under a national flag grants that vessel nationality of that state, with the consequence that national legislation is applicable. Each nation imposes conditions on companies and persons seeking to register ships under its flag, or to invest in such ships – especially if such investment is to be undertaken by foreign interests. Reasons for imposing such conditions may include: legal considerations; national security factors; national

⁵⁶ Bergantino, A. and O'Sullivan, P. (1999), *Flagging out and international registries: main development and policy issues*, International Journal of Transport Economics, 26, pp. 446-71.

⁵⁷ K.X.Li and Wonham, J. (1999) 'Classification, Definition and New Development of Ship Registration', *International Journal of Marine and Coastal Law* 14(1), pp. 137-154.

interest.⁵⁸ China and the US are two typical cases of closed registration and the table 7-2 illuminates the detailed registration requirements of major maritime nations. Due to the strict rules on maritime operation and high operational costs, more and more ship owners decided to register their ships in an overseas nation, e.g. open registry nations or territories.

Table 7 - 2 Registration Conditions of Major Maritime Nations

Nation	Registration Conditions
Australia	Vessel must be majority Australian-owned unless designated to be chartered by an Australian operation
Austria	Over 50% ownership by EEA-nationals; principal place of business must be located in Austria
Belgium	Vessel must be owned by nationals domiciled and resident in Belgium or legal identities having their main establishment in Belgium
Canada	Vessel must be owned by Canadian/Commonwealth citizens/company, principal place of business must be in Canada/Commonwealth country
China, P. R.	Vessels owned by PRC citizens/legal persons; principal place of business in China, at least 50% of the company must be owned by Chinese investors
Denmark	At least 2/3 of the vessel must be owned by persons/companies of EU/EEA nationality, principal place of business must be in Denmark
Finland	More than 60% of Finnish registered vessels must be owned by Finnish nationals, principal place of business must be in Finland
France	50% of the vessel must be owned by EU/EEA nationals or wholly owned by companies headquartered in a EU country, principal place of business in France
Germany	Vessel must be owned by an EU national or a company having its principal place of business in an EU Member country
Greece	Foreign ownership in Greek flag vessel is limited to 49% for non-Greek natural or legal persons
Hungary	Foreign ownership is limited up to 50% unless bilateral agreements imply otherwise
Ireland	Vessels must be fully owned by Irish nationals/corporations or nationals/corporations of a reciprocating state (i.e. UK, Canada, New Zealand and Pakistan)

⁵⁸ OECD (2001), *Regulatory Issues in International Maritime Transport*.

Italy	At least 50% of the vessel must be owned by Italian or EU nationals (persons or companies), derogations can be granted under certain circumstances
Japan	Vessel must be fully owned by Japanese nationals or companies having their principal place or business in Japan, two-thirds of the representatives must be Japanese
Korea	Majority-owned by Koreans (60% of the voting interest); board of directors and representative director must be Korean nationals
Luxembourg	Over 50% ownership by EU-nationals or companies established in Luxembourg; master must be EU-national
Mexico	Vessels must be owned by Mexican natural/legal person
Netherlands	Ships must be owned 2/3rds by EU/EEA-nationals; place of business must be in the Netherlands; management must be in the hands of EU/EEA-nationals
New Zealand	Ships must be majority-owned by New Zealand citizens/residents
Norway	If registered in the NIS, ships with more than 40% foreign ownership must be managed by a Norwegian company with its registered office in Norway
Poland	Ship must be owned by Polish citizens or a company incorporated in Poland
Portugal	Only resident in Portugal can register vessels under the Portuguese flag
Spain	EU nationals or companies; corporations must be domiciled in an EU country and have a representative in Spain
Sweden	50% of the vessel must be owned by Swedish nationals or if the vessel is essentially under Swedish control and its owner his permanent residence in Sweden
Switzerland	Majority of the capital and two thirds of the voting rights, administrative bodies and management must be exercised by Swiss nationals
Taiwan China	Ships must be owned by Taiwan Citizen or corporations, master, chief engineer, and at least ½ of the crew must be Taiwan Citizens
United Kingdoms	Ship must be owned by EEA citizens; place of business must be in the UK
United States	Ships must be owned by US nationals (citizens/corporations); place of business must be in the US; president, board of directors must be US citizens.

Source: Combined from many sources including OECD (2001), *Regulatory Issues in International Maritime Transport*. Regulations of the PRC on Ship Registration, promulgated by the State Council on June 2 1994, and effective as of 1 January 1995.

Open Registry

Open registry, which was called *flag of convenience* in the past, is defined by the International Transport Workers' Federation (ITF) as “where beneficial ownership and control of a vessel is found to lie elsewhere than in the country of the flag the vessel is flying, the vessel is considered as sailing under a flag of convenience”⁵⁹. The open registry nations mostly are nations lack of resources or political will to properly regulate the ships under their flags, so that ship owners shall operate their business in a cheaper and less regulated market. According to the latest declaration of the ITF, the following 37 registration system belong to open registry, which are Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, Bolivia, Burma, Cambodia, Cayman Islands, Comoros, Cyprus, Equatorial Guinea, France (second register), Georgia, Germany (second register), Gibraltar, Honduras, Jamaica, Lebanon, Liberia, Malta, Marshall Islands, Mauritius, Mongolia, Netherlands Antilles, North Korea, Panama, Sao Tome & Principe, Sri Lanka, St. Vincent & the Grenadines, Tonga, and Vanuatu⁶⁰.

In the recent years, as a result of lower crewing costs, tax exemptions and minimal bureaucracy, the greatest proportion of the world merchant fleet is registered under open registry system. At the beginning of 2005, 15,846 merchant fleets with 546.5 million dwt, or 65.1% of world tonnage⁶¹, were not registered in the country of domicile of the owner. According to the statistics of the ISL, the leading two open registry flags are Panama and Liberia with a total tonnage of 262.3 million dwt representing approximate 61 percent of the total tonnage registered for the top ten open registry flags. The Panama flag fleets increased

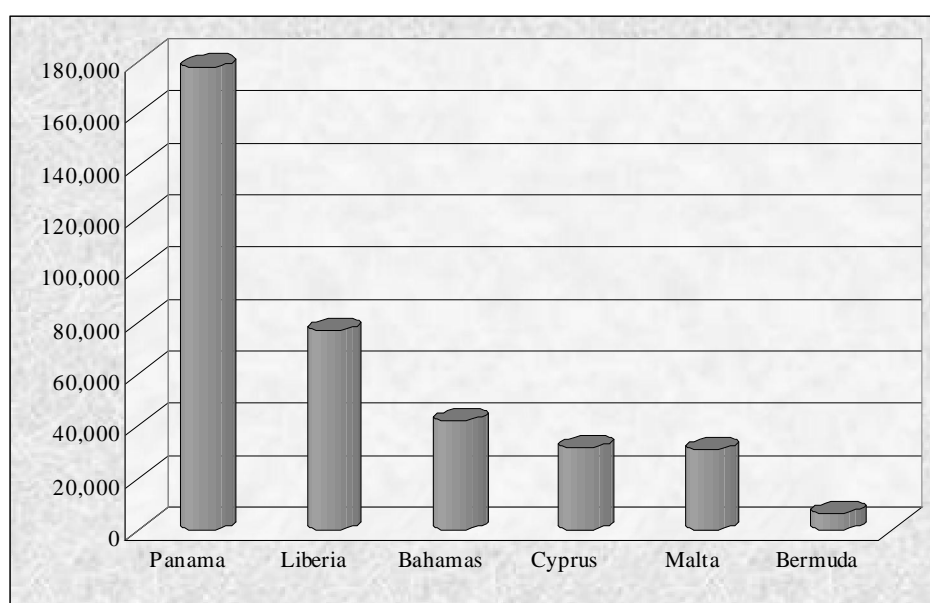
⁵⁹ International Labor Office (1990), *Labor Standards on Merchant Ships*, p. 3.

⁶⁰ International Transport Workers' Federation (2006), *Seafarers' Bulletin No. 20*.

⁶¹ UNCTAD (2006), *Review of Maritime Transport 2005*.

by 22.8 million dwt equal to 14.3 percent compared to figures in 2001. At the beginning of 2005, 4,399 ships with 181.9 million dwt were attributable to Panama⁶², the world's top ranking open registry flag. In the period 2001-2005, the Panamanian registered tonnage grew on average by 3.4 percent yearly. In the period 2001-2005, the Liberian tonnage potentially increased by 2.7 percent annually. At the beginning of 2005, the Liberian fleet stood at 80.4 million dwt compared to 76.6 million dwt on year before and 72.4 million dwt in 2001⁶³. Flagged –out general cargo ships, container ships, tankers and bulk carriers were mainly attributable to Panama. Liberia has a strong position as far as tanker tonnage is concerned. The Bahamas are in the lead as open registry for passenger ships, whereas Cyprus has a relatively strong position with regard to bulk carriers. Figure 7-8 shows the deadweight tonnages under the flags of the top six open registry nations.

Figure 7 - 8 Ships of Six Major Open Registers (2005) ships of 1000 gt and above



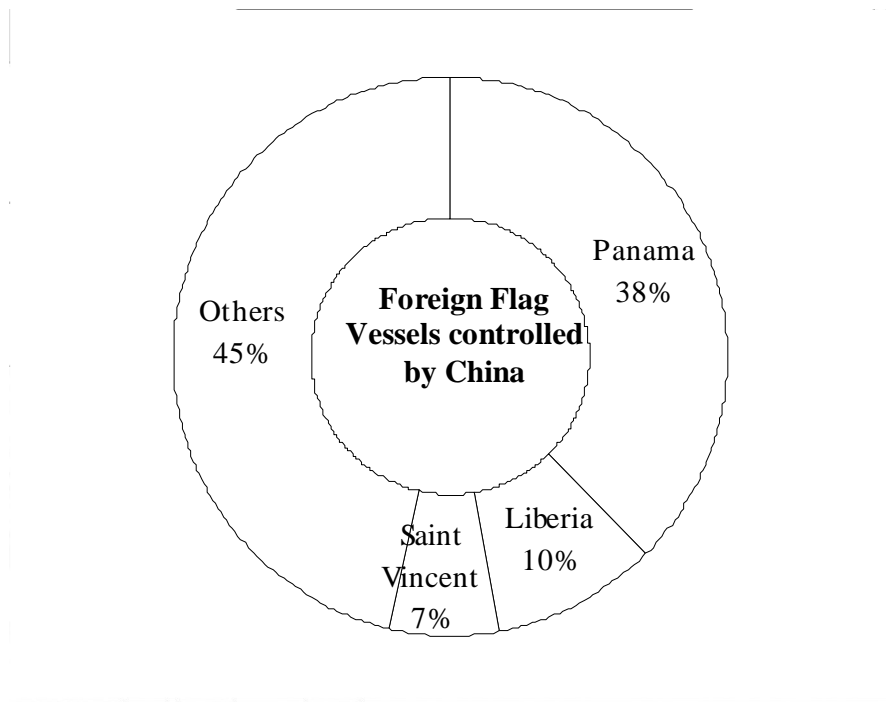
Source: UNCTAD (2006), *Review of Maritime Transport 2005*.

⁶² *Supra* note 54.

⁶³ *Supra* note 54.

Regarding the China case, of all the total 917 merchant vessels with 29,703 thousand dwt foreign flag vessels controlled by China in 2005. The largest proportion was register under the flag of Panama, which equaled to 319 vessels and 11,085 thousand dwt⁶⁴, and the Liberian flag vessels ranked the second, which was 52 merchant ships and 2,931thousand dwt⁶⁵. The figure 7-9 illustrates the specific proportion of open registry flags for China controlled merchant fleets.

Figure 7 - 9 China Flagged-out Tonnage under Open Registry Flags (2005)



Source: ISL (2005), *Shipping Statistics and Market Review*, Vol. 49 No. 4

Open registry system is often blamed about less regulation, because open registered nations or territories enable ship owners and shipping companies to fainaigue legal constrains. For example, in the open registry nations or territories, ship owners and shipping companies are

⁶⁴ *Supra* note 61, p. 38.

⁶⁵ *Supra* note 61, p. 38.

permitted to make use of aging, unsafe and deficient ships; adopt unfair and illegal labor practices; or carry illegal goods, e.g. hazardous waste and drugs. So even if China desires to reform its shipping registration system, the open registry shall not be appropriate to the specific situation of China maritime industry.

Second Registry

Since the late 1970s, in order to attract national controlled fleets re-flag national flags, British first adopted the system of second registration, which allowed vessels registered in its former colonies, e.g. Isle of Man, Gibraltar, Bermuda and Cayman Islands, to fly British flag. Following the experiment of the US, many other traditional maritime nations established their second register or international register, e.g., Brazil (REB), Denmark (DIS), German (GIS), France in island of Kerguelen, Norway (NIS) Portugal in Madeira, Spain in the Canary Islands, South Korea in Jeju Island, The Netherlands in the Netherlands Antilles, and Turkey (TISR)⁶⁶. At the same time, some nations also considered to set up a second registration system to relieve the phenomenon of flagging-out. For examples, proposals for the establishment of second register have already been put under considerations of Canadian⁶⁷, Indian⁶⁸ and Russian⁶⁹ governments. The primary objective of these nations, who desire to establish second register, is to solve the problem of flagging-out and stimulate the development of national merchant fleets. The common measures adopted by the second registration system include loosen requirements for registration, exemption from certain

⁶⁶ *Supra* note 57, and Lloyd's List.

⁶⁷ Lloyd's List (2003), *Canada Mulls Creation of Second Shipping Registry*, 3 December 2003.

⁶⁸ Lloyd's List (2006), *Reliance Comes up with Plan to Launch Tax-friendly Ship Register*, May 18 2006.

⁶⁹ Lloyd's List (2005), *Second Russian Register Could Finally be on Its Way*, 12 October 2005.

taxes, endowment of greater operational freedom, and lower requirements on national employment. Table 7-3 illuminates the detailed conditions of second registers

Table 7 - 3 Conditions of Second Registers

Nation	Second Register	Registration Conditions
Brazil	<i>REB</i>	Majority owned by Brazilian citizens/corporation, master and mechanist must be Brazilian citizens
Canada	<i>CSR</i>	Under discussion: tax incentive, not labor requirements.
Denmark	<i>DIS</i>	Substantial Danish interest, no bareboat registration
France	<i>Kerguelen Islands</i>	French owned ships, 4 French officers, ¼ French crew
	<i>RIF</i>	No information
Germany	<i>GIS</i>	German owned ships only
India	<i>SEZ Registry</i>	Under discussion: preferential tax.
Italy	<i>IIS</i>	6 EU officers including master and chief engineer
Korea, South	<i>Jeju Island</i>	No information
Netherlands	<i>Netherlands Antilles</i>	Majority owned by Dutch, or EU citizens/corporation, principal place of business must be in Dutch or EU member state
Norway	<i>NIS (Bergen)</i>	Open to foreign owned ships by managed in Norwegian Master
Portugal	<i>Madeira (MAR)</i>	Foreign owned ships, any type, age, size, EU master, ½ crew
Russia	<i>Second Russian Register</i>	Under discussion: tax exemption.
Spain	<i>Canary Islands (CSR)</i>	Majority owned by Spanish or EU citizens/corporations, master and first mate must be Spanish national, 50% of the crew must be Spanish or EU citizens.
		Turkish nationals, foreign citizens residing in Turkey and companies incorporated in accordance with Turkish law, master must be Turkish nationals
Turkey	<i>TISR</i>	
UK	<i>Bermuda</i>	Majority owned by qualified person/corporation (including British citizens/ corporations, British overseas citizens/

corporations)

<i>Cayman Islands</i>	Majority owned by British citizen or national of EU, principal place of business in Cayman or UK
<i>Gibraltar</i>	Majority owned by British, British overseas, or EU citizens/corporations
<i>The Isle of Man</i>	Majority owned by British, British overseas, or EU citizens/corporations

Source: Combined from many sources including official web sites of relevant governments; Lloyd's List; K.X.Li and Wonham, J. (1999), *Classification, Definition and New Development of Ship Registration*, International Journal of Marine and Coastal Law 14(1), pp. 137-154.

Comparing with traditional closed registration system, second registry has quite a few advantages and attractions to national shipowners. At the same time, second registration system provides more national support and surveillance on the registered vessels than open registry nations, which ensure the safety and security of merchant vessels. Depending on the agreement with the ITF, some of the second registers have been categorized as open registry⁷⁰.

7.5.3 Second Registration – A Possible Solution

Pursuant to the *Regulations of the PRC on Vessels Registration Administration*, ships, which have one of the following requirements, shall be registered as Chinese ships and have the right to fly its flag:

- a) Ships owned by citizens of the PRC whose residences or principal places of business are located within Chinese territory;
- b) Ships owned by enterprises with legal person status established under China laws and whose principal places of business are located within Chinese territory; if foreign

⁷⁰ *Supra* note 57.

investment is involved in the registered capital, the proportion contributed by the Chinese party shall not be less than 50 per cent;

- c) Ships owned by Chinese Government and Public Organizations; or
- d) Other ships for which the Bureau of Harbor Superintendency of the PRC deems that registration is necessary⁷¹.

Except the ownership requirement and management of the company, China also put national employment requirement on Chinese flag vessels. It requires that “Chinese ship must be manned by Chinese crew”, and foreign crew only can be employed with special permission from the competent communicative authorities of the State Council.⁷²

Professor Li has made a very detailed comparison on the advantages for shipowners in different shipping registration systems, which elaborates as in the table 7-4.

Table 7 - 4 Advantages for Shipowners under Different Register Regimes

Advantages for Shipowners	National Registry	Second Registry	Open Registry
Subsidies and financial support from government	yes	yes	no
Free access to national cargoes	yes	yes	no
Free access to national ports	yes	yes	no
Priority in national port service	yes	yes	no
Flexible crew arrangements	no	yes	yes
Crew cost savings	no	yes	yes
Easy currency conversion	uncertain	yes	yes
Low register fee	no	no	yes

⁷¹ *Regulations of the PRC on Vessels Registration Administration*, promulgated by the State Council on 2 June 1994, and effective as of 1 January 1995, art. 2.

⁷² *Ibid.*

Low or no tax	no	yes	yes
Consideration of low insurance premium	yes	yes	no
Diplomatic service and military protection from flag state	yes	yes	unlikely
Good market and social image (reputation)	yes	uncertain	unlikely
Political stability	likely	likely	uncertain

Disadvantages for Shipowners

Governmental control (safety, financial, political, etc.)	yes	yes	no
Safety inspection by national surveyors	yes	yes	unlikely
National legal commitment in case of war and emergency	yes	yes	no
Risk of being arrested and seized by national enemy	yes	yes	avoidable
Interference of port state control	unlikely	uncertain	yes
Seamen's union boycott	no	uncertain	yes
Requirement of national building	uncertain	no	no
Requirement of national repairing	uncertain	no	no

Source: K.X.Li and Wonham, J. (1999), *Classification, Definition and New Development of Ship Registration*, International Journal of Marine and Coastal Law 14(1), pp. 137-154

This comparison shows that second registration system is a combination of the national registry and open registry, which retain the national support provided in the national registration system, while abstain some disadvantages in the open registry system. To some extent, the second registry shall be regarded as a compromised system for shipping registration and is comparably attractive to both national shipowners and foreign shipowners as well. As mentioned above, imported vessels are liable to import tariffs and value added tax, totaling 27.53% of the price of the vessel. The current strict registration system in China is too restrictive and less attractive to national ship owners, which resulted in grievous trend of flagging-out. As a result of ineffective control over the flagged out ships, corporate taxes may also be lost to China.

Hence, the main aim of reform on ship registration shall be summarized as to attract more ships controlled by Chinese citizens or corporations to re-flag under Chinese flag, so the second registration system for national merchant vessels shall be an appropriate way forward for China maritime industry. To this end, China should adopt the experience of traditional maritime nations as a reference, and China shall consider reforming its shipping registration system, and making it more appealing to Chinese shipowners and encouraging them to register their vessels domestically.

As discussed above, the main objective of second registry is to lower operating costs with those prevailing under open registry, while, at the same time, maintaining high technical standards and effective implementation of international conventions. By also flying the national flag, ships in the second registration system enjoy high reputation by shippers and charterers. Regarding the China case, second shipping registry shall include the following characteristics: the majority of registered vessels should be owned by Chinese citizens or corporations, the manning system should be eased and the required proportion of national seafarers reduced, the taxation policy shall be consisted with the tonnage tax policies of other second/open registry nations or territories. Such tax policies may include exemptions from tonnage dues, annual tax, and income tax by seafarers⁷³.

Hong Kong Special Administrative Region (HK), as a part of China territory after its handover after 1997, is known region for compromised shipping registration and provides comparatively loose requirements for shipowners. So in China's reform on shipping registration, HK may be a convincing place for the application of China second register for

⁷³ *Supra* note 48.

its relatively preferential treatments for shipowners. According to the introduction of the HK Marine Department, if a majority interest of the ship is owned by one or more "qualified" persons shall be registered in Hong Kong⁷⁴. In this rule, the qualified person refers to

- An individual who holds a valid Hong Kong identity card and who is ordinarily resident in Hong Kong; or
- A body corporate incorporated in Hong Kong; or
- An oversea company registered in the Hong Kong Companies Registry under Part XI of the Hong Kong Companies Ordinance.⁷⁵

In addition, the annual income tax for Hong Kong registered corporation is only 17.5 per cent on taxable income, much lower than the 33 per cent income tax in China, and there is no nationality or residential requirements for officers and crew serving on Hong Kong registered ships. If China applied the second registry in Hong Kong, shipowners would possibly enjoy the preferential treatments provided by both mainland China and Hong Kong.

From the experiences of traditional maritime nations, who are currently practicing second registry, the reform on China shipping registration system shall be attractive to vessels under foreign flag, but owned by China citizens, reflag Chinese flag, which may relieve the critical problems existing in the development of China maritime industry, e.g. gradual decrease of national flag deadweight tonnages, aging of national flag vessels and in-balanced structure of national flag merchant fleets.

⁷⁴ HKSAR Marine Department, *The Hong Kong Shipping Register – an introduction*, available at http://www.mardep.gov.hk/en/pub_services/reg_gen.html, (last visited August 1, 2006).

⁷⁵ *Ibid.*

7.6 Summary

Maybe liberalism or protectionism is really significant to the development of world economy, but what a nation concerns is an optimum maritime policy for itself, in other statements, the policy that is the most propitious for the accomplishment of national developing objectives in maritime industry.

In the evolution of China maritime industry, it reveals that neither protective nor liberalizing maritime policy can satisfy any developing stage of a nation's maritime industry. A nation ought to adjust its maritime policy in a given situation in accordance with its different developing objectives. In the initial stage after China's foundation, the protectionism policy was adaptable to the requirements of its infant maritime industry, and such policy really ensured the establishment of national merchant fleets. Later, with the process of China's economic reform and opening-up, its objectives of maritime policy were changed to the privatization of state-owned maritime enterprises and the synchronization with global shipping market, which decided the gradual liberalizing route of its maritime policy. While after 20 years economic reform, the evidences have shown that the current maritime policies practiced in China are no longer adaptable the development of national maritime industry and adjustments on China's maritime policy shall be of great importance.

The elimination of preferential treatments to foreign investors is in accordance with the principle of national treatment of the WTO, and shall make the overseas and domestic maritime services providers compete on a fair ground. And a moderate reservation for some strategic cargoes, e.g. crude oil and ore, to national flag fleets shall not only be attractive for

national maritime enterprises to register their vessels under China flag, but ensure a certain transportation capacity of national fleets in time of emergency or in needs of national security. Second registry, as a common countermeasure adopted by most maritime powers, can to some extent dispel the pressure of flagging out of national flag ships. These legislative suggestions aim to provide possible solutions for the modulation of the framework of China maritime policies, and promote the development of China maritime industry.

CHAPTER 8

CONCLUSIONS

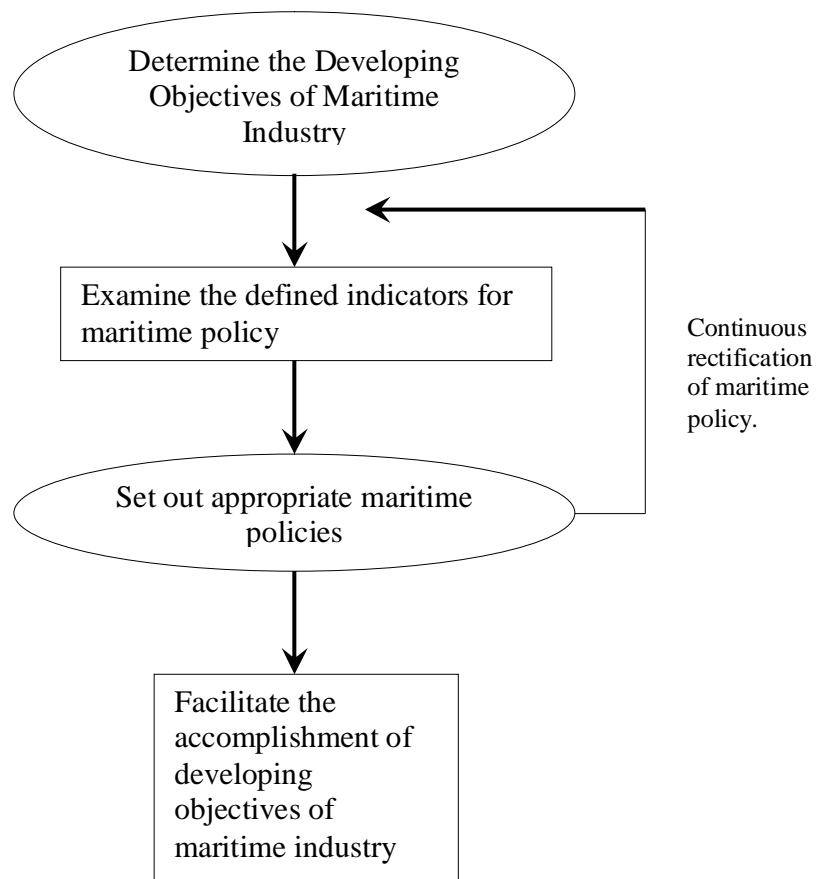
This Chapter summaries the conclusions and main contributions of the thesis and indicates possible further work.

8.1 Contributions to the Maritime Theory

As a clear definition of key concept is the foundation of any research, this thesis takes the traits of maritime industry into consideration and provides a comprehensive definition of maritime policy. Comparing with other industrial sectors, maritime industry undertakes two kinds of functions, i.e. private function and public function, which determine that maritime policy shall be formulated not only to facilitate the development of industry itself and national economy, but also to ensure the national security in time of emergence. Bearing this trait in mind, maritime policy shall be defined as a series of economic, legal and administrative regulations, for the sake of national security and developing objectives, to ensure the development of its national fleets and operation of its maritime industry, by means of government interference and financial support. These special aspects determine the contrary arguments in the research field, protectionism versus liberalism.

Going on this definition, the formulating process of maritime policy is illustrated as Figure 8 – 1. Regarding a specific nation, it must, at the first step, make clear of the functions and developing objectives of its maritime industry and then explore a set of policies that facilitate the accomplishment of these desired objectives.

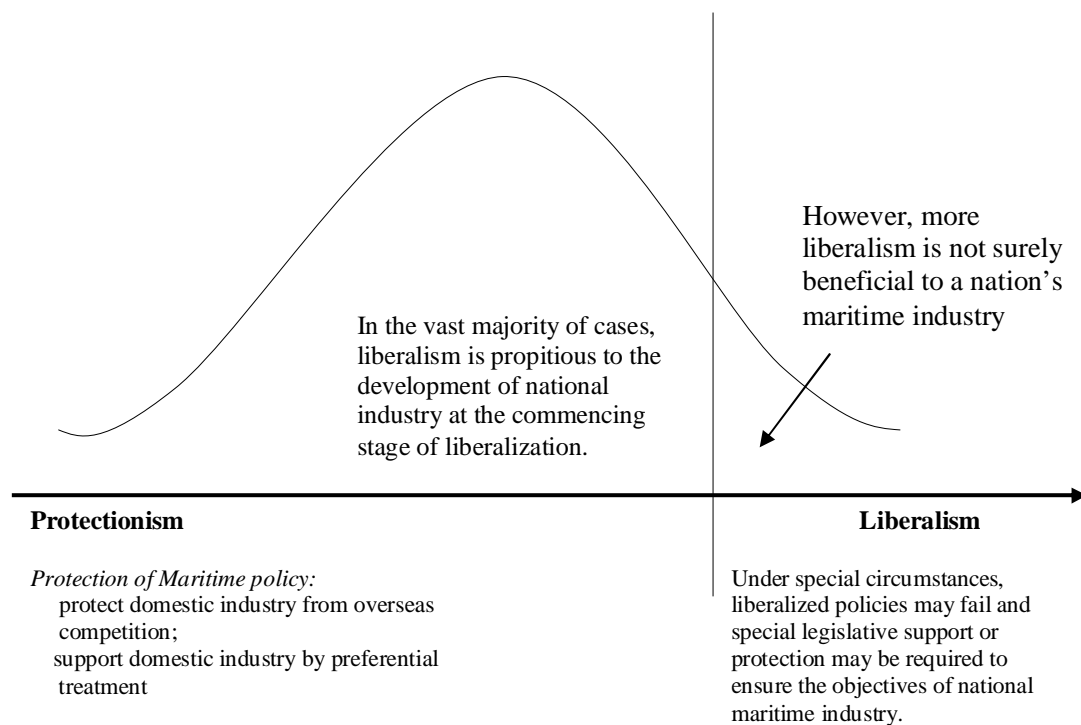
Figure 8 - 1: Formulation Process of Maritime Policy



At the same time, this formulating process is rather dynamic than static. In other words, during the implementation of maritime policy, relevant economic indicators need to be examined continuously to check up the effects and then make appropriate modifications to the maritime policy.

This process indicates that either liberalism or protectionism is not the fundamental issue to a specific nation, because the primary function of its maritime policy is to achieve the developing objectives of its maritime industry. In other statement, neither liberalism nor protectionism is universally appropriate to a specific nation, so it must continuously adjust the maritime policy to make it be propitious to its own maritime industry.

Figure 8 - 2 Impact of Liberalism to Maritime Industry



The case study on China maritime industry illuminates that gradual liberalization has benefited the development of its maritime industry in the initial stage. However, when the development comes into a deeper stage, the invariably liberalizing policy is not adaptable to the demand of national maritime industry and economic development as well. These facts constitute a new way for the formulation of national maritime policy, i.e. *optimum maritime policy*. Regardless of protectionism or liberalism, optimum maritime policy only aims to enact a set of maritime policies that facilitate the developing objectives of national maritime industry.

8.2 Contributions to the Methodology of Maritime Research

To make the maritime policy intuitionistic, which may provide guidance for the formulation of maritime policy, and establish the relation between national economy and maritime policy, this research applies economic and econometric methodologies into legal research.

8.2.1 New Indicators for Maritime Policy Constructed

Two indicators have been defined to examine the development of maritime industry, i.e. National Carriage Rate and National Seafarer Employment Rate. NCR describes a nation's tolerance for further opening its maritime industry and observes the relation between maritime policy and the development of its maritime industry. This indicator establishes a relation between national controlled deadweight tons and national waterborne trade volumes. The calculating formula for NCR is

$$\text{NCR} = \frac{\text{National Fleet (DWT)}}{\text{National Trade (Ton)}} \times \frac{\text{World Total Trade (Ton)}}{\text{World Total Fleet (DWT)}}.$$

NSER figures a nation's employment competency of seafarers and development of seafarer training. It describes the relation between national seafarers and national controlled vessels.

The calculating formula for NSER is

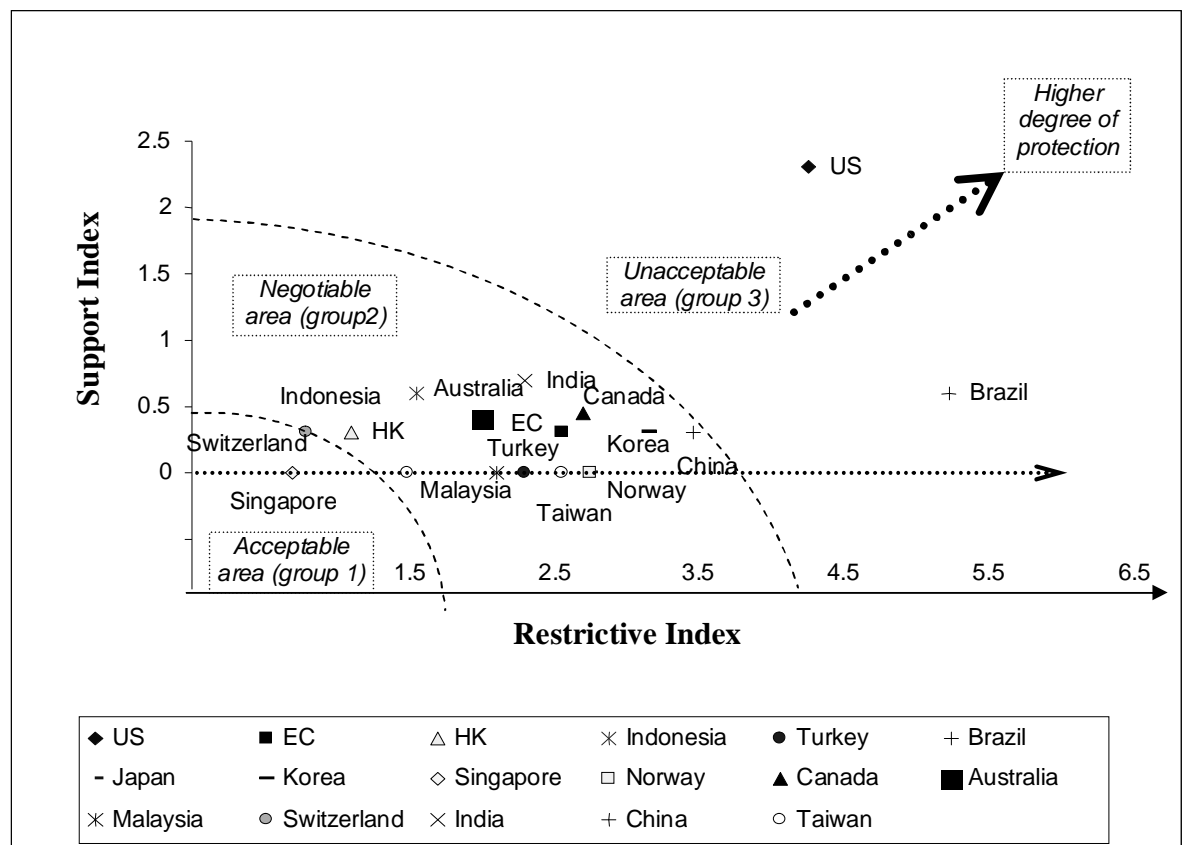
$$\text{NSER} = \frac{\text{Nation's Seafarer Number}}{\text{Nation's Vessel Number}} \times \frac{\text{World Total Vessel Number}}{\text{World Total Seafarer Number}}.$$

8.2.2 Quantification of Maritime Policy

Besides obtaining these two indicators, another contribution of this research is to establish an index system for the quantification of maritime policy in the context of the WTO. In previous maritime research, to define a nation's maritime policy belonging to liberalism or protectionism largely depends on subjective estimation, but the index method may give a specific nation a score on maritime policy as long as sufficient data available. In the index system established by this thesis, the maritime policy is examined from two dimensions, i.e., restrictive measures and support measures, and grouped into categories. Support Index describes the degree of national supports (subsidies) to its national maritime industry, while Restrictive Index reflects the restrictions on foreign companies entering into its national market. Each category is assigned a numeric weight based on subjective assessments of the costs of restrictions to economic efficiency. Finally, the indices synthesize these scores and weights to quantify the overall maritime policy. The higher scores mean lower opening degree of maritime policy. Figure 8 – 3 figures out the maritime policy of top 30 maritime nations which are results of the combination of a nation's restrictive score and its support score.

To minimize the limitations stated in the first Chapter, this thesis collects most available sources relating to maritime policies, which are contemporarily adopted by selected maritime nations. At the same time, this index system is confined the WTO context, which constructs a common ground for all selected nations and minimizes the impacts of subjectivity. On the other hand, the results of index method also clarify the dilemma of current WTO MTS negotiation, which provides the possibility for the solution of this stagnation.

Figure 8 - 3 Cross-nation Comparison on Maritime Policy



8.2.3 Relation between Indicators and Maritime Policy Established

Having defined two indicators for maritime industry and quantifying the national maritime policy, the relation between these two parties shall be established and empirical study shall be then applied.

In line with the theory of economic sociology and political economics, the relation between policy and economy shall be stated as superstructure is determined by national economic structure and influences the development of national economy. In the maritime field, the superstructure refers national maritime laws and policies, which in this research is described by the index method, and economic structure refers to economic foundation of the maritime industry, which are described by three defined indicators. Then the relation between maritime policies and economic foundation for maritime industry established by the empirical study shall be explained as maritime laws and policies are determined by economic structure of national maritime industry and influence the development of maritime industry.

Having critically reviewed previous research in maritime policy taking into account of the characteristics of globalization, three fundamental economic indicators, i.e. NCR, NSER, and BOP, have been justified in the formulation of national maritime policies. The relation between the maritime policy and economic indicators shall be illustrated as:

$$\text{MAR. POL}'Y_{it} = \alpha_0 + \alpha_1 \text{NCR}_{it} + \alpha_2 \text{NSER}_{it} + \alpha_3 \text{BOP}_{it} +$$

Where i is the nation; t is the time; MAR. POL'Y is the opening degree of maritime policy. NCR is the indicator of national carriage rate, which reflects the development of national waterborne trade and merchant fleets. NSER is the indicator of national seafarer employment rate, which reflects national employment situation against its national owned fleets. BOP is the indicator of the balance of payment, which is adopted to describe the economic situation of the nation. And ϵ is the stochastic disturbances term, i.e., the standard error of the equation.

The empirical analysis between the maritime policy and three defined indicators discloses an existed tight relation. The results manifest that a nation with lower NCR, higher NSER, and serious deficit in BOP, usually takes a relatively protective way in maritime policy, and *vice versa*. Through the confirmation of the relation between three defined indicators and maritime policy, an optimum approach for the formulation of national maritime policy is sculptured out. The formulating process of national maritime policy is a dynamic and long period and affected by the attitude of legislators. For example, a nation may adopt liberalized maritime policy when a liberalist comes into power and *vice versa*. Nevertheless, the empirical study reveals that, observing from a long period, national maritime policy must move backward to be suitable for its economic conditions, as long as a nation desires to develop its national maritime industry. Therefore, the significance of the empirical study is that it points out the existence of such optimum maritime policy and expatiates how a nation may examine whether its maritime policy is adaptable to the development of national maritime industry by examining three economic indicators. This result shall make the formulation of national maritime policy more efficient.

8.3 Contributions to China Maritime Legislation

In the successive years after China's economic reform and open-up, China's economy has developed phenomenally, including maritime industry. Several container ports in China such as Shanghai, Shenzhen and Qingdao have become the leading world ports. Increasing levels of overseas investment and involvement have also taken place in maritime industry, especially after China's accession to the WTO.

Despite its importance, China's maritime policy, which is essential to the development of its maritime industry, has not received enough attention that it deserves. In this respect, this thesis contributes to the existing literature in that it not only extensively reviews the maritime industry and maritime legal framework in China, but also examines whether the currently implementing maritime policies are propitious to the development of its maritime industry.

In the evolution of China maritime industry, this thesis reveals that neither protective nor liberalizing maritime policy can satisfy any developing stage. China ought to adjust its maritime policy in a given situation in accordance with its different developing objectives. In the initial stage after China's foundation, the protectionism policy was adaptable to the requirements of its infant maritime industry, and such policy really ensured the establishment of national merchant fleets. Later, with the process of China's economic reform, its objectives of maritime policy were changed to the privatization of state-owned maritime enterprises and the synchronization with global shipping market, which decided the gradual liberalizing route of its maritime policy. While after 20 years economic reform,

the evidences of empirical studies have shown that the current maritime policies practiced in China are no longer adaptable the development of national maritime industry and adjustments on China's maritime policy are of great importance.

Basing on these findings, three legislative suggestions for the modification of China maritime policies have been proposed.

1. The elimination of preferential treatments to foreign investors is in accordance with the principle of national treatment of the WTO, and shall make the overseas and domestic maritime services providers compete on a fair ground.

2. A moderate reservation for some strategic cargoes, e.g. crude oil and ore, to national flag fleets shall not only be attractive for national maritime enterprises to register their vessels under China flag, but ensure a certain transportation capacity of national fleets in time of emergency or in needs of national security.

3. Second registry, as a common countermeasure adopted by most maritime powers, can to some extent dispel the pressure of flagging out of national flag ships. These legislative suggestions aim to provide possible solutions for the modulation of the framework of China maritime policies, and promote the development of China maritime industry. These suggestions are rather realistic than suppositional, as some of them have already been either embodied in draft maritime policies, or under consideration of China legislative authorities.

8.4 Further Research

This thesis concentrates on the formulation of national maritime policy and the classical dispute, i.e. liberalism v. protectionism. In this regard, the empirical study only contains all policies that are currently implemented by selected nations and ignores the historical study of national maritime policy. However, it is important to examine the evolution of national maritime policy in company with the development of national maritime industry, which may further verify the reliability of the empirical results.

On the other hand, due to the insufficient data on relevant indicators, a time series study on the relation between defined indicators and maritime policy has not been processed. Nevertheless, if more recognition and efforts were devoted by maritime nations, a more complete empirical study would be worth doing.

In terms of methodology, despite the numerous advantages over alternative approaches, index method suffers to some extent from its subjectivity. Efforts on avoiding this problem have already been made, but are still at the state of infancy. It will be extremely interesting to examine the new approaches developed along this direction and apply them to the quantification of maritime policy.

To quantify the maritime policy of a specific nation is the beginning, not the end of the analysis. It will be interesting to explore the reasons behind the formulation of maritime policy associated with each individual maritime nation. This research shows that it is hard to find a universal maritime policy that is appropriate to all nations' maritime industry. This

implies that each nation has its own specific situations and needs to be analyzed on a case-by-case basis.

APPENDICES

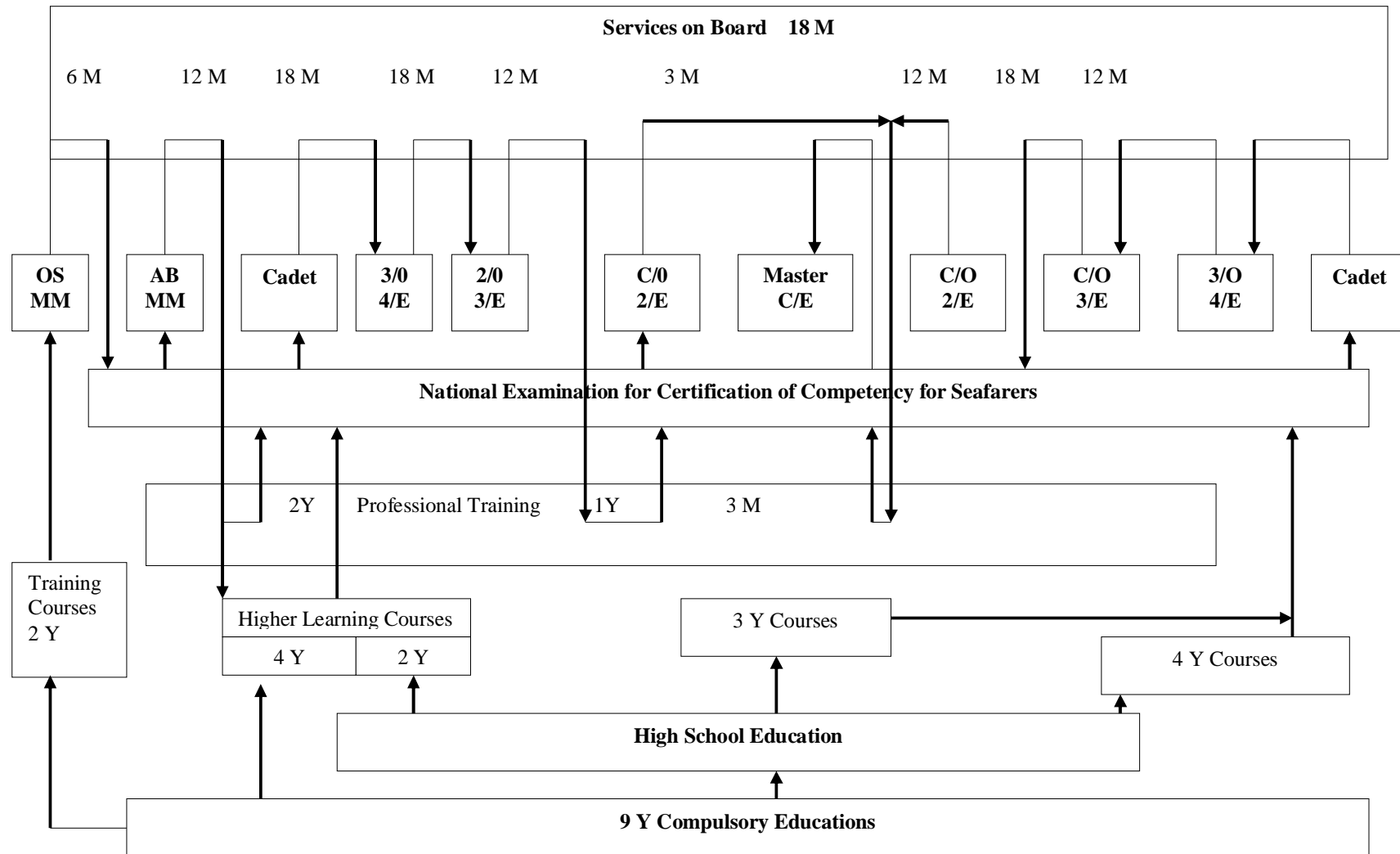
Appendix I Volume of Freight Handled in China Top 10 Ports (1991-2004) (000 tons)

Year		Ranking									
		1	2	3	4	5	6	7	8	9	10
1995	Ports	SH	QHD	GZ	NB	DL	TJ	QD	SZ	ZHJ	LYG
	Volume	165670	83820	72990	68530	64170	57870	51030	30800	18850	17160
1996	Ports	SH	QHD	NB	GZ	DL	TJ	QD	SZ	ZHJ	LYG
	Volume	164020	83120	76390	74500	64270	61880	60030	30200	17510	15830
1997	Ports	SH	NB	QHD	GZ	DL	QD	TJ	SZ	ZHJ	XM
	Volume	162570	82180	78610	75020	70410	69160	67950	33570	19170	17000
1998	Ports	SH	NB	GZ	QHD	DL	QD	TJ	SZ	ZHJ	LYG
	Volume	163470	87010	78620	77880	75120	70180	68180	34440	18370	17760
1999	Ports	SH	GZ	NB	DL	QHD	TJ	QD	SZ	ZHS	LYG
	Volume	186290	101520	96600	85050	82600	72980	72570	46630	21010	20170
2000	Ports	SH	NB	GZ	QHD	TJ	DL	QD	SZ	ZHS	LYG
	Volume	204400	115470	111277	97430	95670	90841	86360	56853	31890	27082
2001	Ports	SH	TJ	SZ	ZHJ	QHD	QD	DL	SZ	ZHS	LYG
	Volume	220990	128523	128229	113690	113020	103980	100470	66425	32810	30581
2002	Ports	SH	TJ	SZ	ZHJ	QD	QHD	DL	SZ	ZHS	FZ
	Volume	263840	153980	153240	129060	122130	111680	108510	87660	40680	39100
2003	Ports	SH	TJ	SZ	ZHJ	QD	DL	QHD	SZ	ZHS	FZ
	Volume	315390	185240	171060	161810	140900	126020	125600	112400	56770	47630
2004	Ports	SH	TJ	SZ	ZHJ	QD	QHD	DL	SZ	ZHS	YK
	Volume	378962	225850	215190	206161	161650	150320	145162	135246	73593	59390

Note: SH = Shanghai, QHD = Qinhuangdao, DL = Dalian, GZ = Guangzhou, NB = Ningbo, QD = Qingdao, TJ = Tianjin, ZHJ = Zhanjiang, SZ = Shenzhen, LYG = Lianyungang, XM = Xiamen, ZHS = Zhoushan, FZ = Fuzhou, YK = Yingkou.

Source: National Bureau of Statistics, *China Statistics Yearbook* 1996 – 2005.

Appendix II Maritime Education, Training & Certification System in China¹ (M=Month, Y=Year)



¹ Source: MOC (2000), *Report on China Shipping Development*.

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