Maritime Cabotage: International Market Issues in the Liberalization of Domestic Shipping

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Introduction

International shipping is one of the most global of industries. Intense competition among global suppliers has pressured individual shipowners to cut costs by seeking the lowest cost sources of supply of labor, maintenance and repair as well as the least cost tax environment. Therefore, shipowners operating internationally have almost universally opted to use flags of convenience and crews from low-cost countries. As a result, international shipping secures cost leadership when competing against other modes of transport supply in terms of cost per tonne-kilometer carried. It also has cost advantages over domestic maritime operators if the market boundaries are porous and the two types of shipping are encouraged to compete without consideration of the domestic tax and labor environment.

The globalization of shipping led to a well-documented ‘race to the bottom’ in ship quality in the 1990s, resulting in a number of ‘ships of shame’ government reports.1 The net impact of this experience was a refocusing of the efforts of the International Maritime Organization (IMO) on ‘Safer ships

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and cleaner seas’ at that time. Since 2001, the IMO has also directed its attention towards the technical issues of vessel and port security as well as marine and air pollution from ships. The IMO has not addressed issues of fair competition, leaving those to the World Trade Organization (WTO), the Organisation for Economic Cooperation and Development (OECD) and the relevant national competition authorities.

Vessels apply the commercial legal environment of the flag under which they fly. This means that a ship flying the Panamanian flag will have to meet Panamanian crewing requirements and maintain the vessel in accordance with Panamanian standards. Many developed countries became very concerned about the quality of the ships that call at their ports, leading to the rise of port State control in the early 1980s, where the port State sets the standards that vessels calling at its ports must meet based on the international conventions the port State has ratified.

The issue of a market boundary between coastal or domestic shipping and international shipping has a long history. As noted by Edgar Gold in his classic book on the shipping industry and its regulation, *Maritime Transport*, the Carthaginians were great ‘free traders’ but Carthage exercised tight controls over its harbors and coastal seas, as this was critical to the protection of its national commercial interests.

This could be done crudely, as by the early Egyptians, by simply destroying competing ships with a protective screen of warships. It could also be done with greater finesse, as by the later Carthaginians or Greeks, by placing severe restrictions on foreign vessels and trade, which virtually put such traders out of business since they needed to come to the markets in Carthage or Greece.

Restrictions imposed by the coastal State on the international market may have initially been driven to promote commercial interests through protectionism but, as Gold also noted, the emergence of modern coasting trade restrictions in France, Russia, and the United States followed World War I. This protectionist attitude by countries was a central element in early twentieth century shipping regulations. In many countries, the regime put in place about 90 years ago remains today; the question asked but unanswered in this

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3 International cooperation for port State activities relies on the provisions of the 1982 United Nations Convention on the Law of the Sea and the various memoranda each State signs with its regional partners; as this is not the subject of this essay, it will not be discussed further.


5 Ibid., 112.