MARITIME CABOTAGE

A GLOBAL ANALYSIS

INCLUDING CABOTAGE
CAMPAIGNING TOOLS

A Report Jointly Produced by the Maritime Union of Australia (MUA) and the International Transport Workers Federation (ITF)

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Executive Summary

Part A presents a sketch map of the distribution and features of cabotage systems across the world. Cabotage, in all its various forms, is widespread amongst world’s maritime nations. Among the members of the World Trade Organisation, there are at least thirty maritime nations with well developed systems of cabotage. Excluding Europe, the report identifies 35 countries where cabotage regimes operate. Cabotage is particularly strong in North, South and Central America, East Asia, South Asia and South East Asia. Since 1998, the EU has operated a form of regional cabotage.

Maritime cabotage regimes vary enormously. Drawing on interviews with seafaring union representatives in Australia, Canada, USA, Indonesia and Japan and published outlines of many other national cabotage principles, Part A identifies five key distinguishing features of Cabotage systems:

1. The strength and complexity of linkages between cabotage law and broader “cross cutting” national policy goals.
2. Restrictions governing the ship registration, licensing, ownership and who can crew aboard approved ships.
3. The extent to which regulations allow for the reflagging of foreign vessels and/or the use of vessels not normally authorised for cabotage.
4. The scope of maritime activities covered by cabotage systems
5. Strength of institutional and political support for cabotage

This analysis forms the basis of a cabotage classification matrix presented in Part C – Campaign Tools based on a simpler three way analysis of scope, compliance framework, and strategic orientation.

Cabotage regimes are least vulnerable in those countries where cabotage is closely integrated with cross cutting national goals. Part A provides case studies of integrated cabotage systems operating in USA, Brazil, Japan and the policy framework for the new Indonesian system framed in new laws in 2008. All four case studies demonstrate markedly different approaches arising out of specific economic and political conditions. Japan has a focus on providing greater maritime safety and market orderliness, including optimising ship volumes. Brazil uses a mix of strategies including the purchasing policy of Petrobras (the major state controlled integrated energy corporation), taxation incentives, direct subsidies and cabotage to achieve a broad based revitalisation of maritime activity encompassing
ship building, shipping, ports infrastructure and related service industries. These bolster local industry and, at the same time, support investment, technological and skills transfer from some of the world’s largest ship builders, terminal operators and shipping companies. Indonesia has just embarked on an ambitious project using much stronger cabotage laws, state purchasing, banking and insurance support measures and tax policy to support growth of local shipping and ship building in order to turn around weak performance of Indonesian shipping in meeting local market demands. The USA system under the Jones Act is predicated on a well equipped merchant marine for the purposes of national defence and growth of US commerce.

By comparison, Canadian and Australian cabotage systems are less integrated with national policy goals and these are also reviewed briefly.

Using WTO data, Part A also reviews the policies of 14 countries to find out how ownership restrictions, crewing requirements, licensing and flagging requirements are applied across a broad cross section of cabotage systems. Countries compared are: Argentina, Australia, Brazil, Canada, Chile, Colombia, Japan, Mexico, Peru, Philippines, Thailand, Turkey, Uruguay and USA. The analysis shows that most countries require in principle nationally flagged ships and nationals as crew members. Systems vary from the very strict (USA and Japan) to the very open (Australia) In Australia, there are no substantive restrictions on the nationality of crew, flagging or ownership of vessels – the only requirement being that crew are paid at going Australian rates. In the USA, ships must be owned by US nationals, crewed by US citizens and built and repaired by US shipyards.

Case studies are presented for Australia, Mexico and Canada on differing methods of applying for and obtaining temporary permits for foreign ships where licensed ships for the cabotage trade are unavailable. Both Australia and Canada use similar principles of application and Departmental review – though Canada’s system is less liberal and more transparent than the Australian system. Mexico uses a system of public bidding for permits that ensures first preference to Mexican flagged ships with Mexican crews.

Part B presents an overview of recent trends in cabotage policy directions. It identifies four key drivers of change:

- **Regional Economic Integration** – with the emergence of continental or regional cabotage in the EU in 1998
- **Technological & Organisational Change with Containerisation** – cabotage relaxation is identified as having taken place in China, Korea, India and Malaysia in order to facilitate transhipment of boxes, feeder routes from hub ports, the easing of
congestion at large Indian ports and the promotion of Malaysian Regional Hub ports in competition with Singapore.

- **“Push” for deregulation at national level and in multilateral organisations.** This movement has only been successful in New Zealand. Australian cabotage effectively deregulated using relaxed permit conditions but this may be turned around by incoming Labor Government committed to strengthening Coastal Shipping. The WTO has been unsuccessful in getting cabotage into negotiations effectively because of the US stance and the status of cabotage as delivering service rather than a good.

- **21st Century policy backlash against cabotage relaxation** Recent strengthening of cabotage laws and/or growth of coastal shipping in response to cabotage laws in countries such as Brazil, Argentina, Mexico and Indonesia mark a turning of the tide in the campaigns to defend maritime cabotage. In these cases, more strategic, thorough and well developed strategies have emerged after experiments with more liberal maritime policy frameworks have failed. In Brazil Cabotage strengthened also by strategic use of purchasing policies by the state controlled energy conglomerate Petrobras.

**Part C** is designed as a stand alone section. It draws on the analysis in Parts A & B and case study materials to present a brief 9 part set of campaign tools. This section essentially distils lessons and approaches from the case study materials that may be useful in various campaigns around cabotage.

**Part D** comprises the major case study of Brazil. This is featured because it demonstrates what is possible when innovative integrated national policies integrate and harness private and public resources and policy frameworks (including cabotage) with the aim of revitalising maritime industry. Minor case study overviews of Indonesia, USA, Canada and Australia are also provided. This material has been drawn on liberally in the presentation of Parts A, B and C.

This report is in four parts. Each part stands alone. Part A & B draws on the case studies of Part D – so some case study material is duplicated.
PART A  - Mapping Cabotage - Distribution and Attributes

1  Definition

Maritime cabotage is the legal regulation of commercial shipping operating exclusively within the nation’s territorial waters. Cabotage laws and regulations set out the conditions governing which vessels may engage in coastal trade. These conditions can relate to a range of factors including: ship registration and ownership; composition of the crew; origin of the ships; and the conditions under which permission may be granted to ships not ordinarily authorised to trade. Most maritime cabotage regimes require ships to fly the national flag.

Generally, where cabotage exists, there is a separation between international and cabotage trade. International cargoes, once offloaded at the destination port, must be transported to other coastal destinations by ships authorised for cabotage. For example, in the case of container traffic, the deep sea trade delivers containers to a hub port. The cabotage trade provides the feeder services delivering containers to smaller terminals along the coast.

In some countries terms other than cabotage are used. In Canada, cabotage trade is referred to as the “coasting trade”.

2  The Wide Geographic Scope Of Cabotage

Cabotage, in all its various forms, is widespread amongst the world’s maritime nations. Among the members of the World Trade Organisation, there are at least thirty maritime nations with well developed systems of cabotage. Appendix A1 below consists of the summary details of cabotage and registration requirements as presented in each of the latest World Trade Organisation country reports.

Maritime Cabotage laws are found, in some form, in most of the world’s major maritime nations and in most nations with significant domestic coastal shipping trade. Cabotage laws prevail in these countries despite three decades of accelerating globalisation, internationalisation of trade and the systematic deregulation of many sectors of national economies.

In the Asia Pacific region, maritime cabotage regimes exist in PRC China, Chinese Taipei, Japan, Republic of Korea, Malaysia, Philippines, Indonesia, Thailand, Turkey, Vietnam, Myanmar, India and Australia. Cabotage restrictions remain in place in all of the ASEAN archipelagic
nations and those with extensive coastline – only Brunei, Cambodia, Lao PDR and Singapore are without cabotage restrictions – the geography of these countries making marine cabotage unnecessary.

Maritime cabotage is widespread throughout Northern, Central and Southern America. Cabotage is found in Canada, USA, Mexico, Nicaragua, Honduras, Guyana, Peru, Ecuador, Uruguay, Venezuela, Brazil, Bahamas, Argentina and Chile. African and Middle Eastern countries using cabotage include: Ghana, Nigeria, Ivory Coast Egypt, and Algeria.

In 1995, the US MARAD conducted a survey of maritime nations and found a wide spread of cabotage systems. Part of the MARAD survey analysis is presented in Table 1 below – European Data has been deleted as out of date. Putting these two sources we have identified 35 countries (including the Peoples Republic of China) in which maritime Cabotage in some form exists. This list excludes European nations.
### TABLE 1: Extracted Data from “By the Capes Around the World: A Summary of World Cabotage Practices” US MARAD (1995?)

<table>
<thead>
<tr>
<th>Country</th>
<th>Cabotage</th>
<th>Fleet Subsidy</th>
<th>Crew Requirement</th>
<th>Ownership Restriction</th>
<th>Domestic Ship Build Provisions</th>
<th>Re-flagging</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Title 46 USC App. 883 (Jones Act) and Sec. 289</td>
</tr>
<tr>
<td>Algeria</td>
<td>x</td>
<td>1</td>
<td>x</td>
<td>x</td>
<td></td>
<td>Ordinance 68-83 (4/16/68) and Ordinance 76-80 (10/23/76)</td>
</tr>
<tr>
<td>Argentina</td>
<td>x</td>
<td>4</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>Decree 19492 (1944) ratified by law 12980</td>
</tr>
<tr>
<td>Australia</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>Navigation Act 1912</td>
</tr>
<tr>
<td>Bahamas</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>Boat Registration Act &amp; Merchant Shipping Act</td>
</tr>
<tr>
<td>Brazil</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Shipping Law of 1967</td>
</tr>
<tr>
<td>Canada</td>
<td>x</td>
<td>x</td>
<td></td>
<td>3</td>
<td>5</td>
<td>Canadian Shipping Act, Part X</td>
</tr>
<tr>
<td>Chile</td>
<td>x</td>
<td>4</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Maritime Transportation Laws; Decree Law 600</td>
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<tr>
<td>Colombia</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>5</td>
<td>Decree 2451, July 31, 1986, Articles 55-62</td>
</tr>
<tr>
<td>Ecuador</td>
<td>x</td>
<td>4</td>
<td>x</td>
<td>x</td>
<td></td>
<td>Cargo Reserve Law</td>
</tr>
<tr>
<td>Egypt</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>3</td>
<td>Law Number 63 (1961); Company Law 158 (1981)</td>
</tr>
<tr>
<td>Finland</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>1</td>
<td>Section 4 of the right to purse business leg</td>
</tr>
<tr>
<td>Honduras</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>1</td>
<td>Commercial Code (1948); Merchant Fleet Law</td>
</tr>
<tr>
<td>India</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>1</td>
<td>Merchant Shipping Act</td>
</tr>
<tr>
<td>Indonesia</td>
<td>x</td>
<td>4</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Regulation PP17 (1988)</td>
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<tr>
<td>Japan</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>5</td>
<td>Japan Ship Law, Articles 1,3,4,5 (1988)</td>
</tr>
<tr>
<td>Malaysia</td>
<td>x</td>
<td>4</td>
<td>x</td>
<td></td>
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<td>Merchant Shipping Ordinance of 1952</td>
</tr>
<tr>
<td>Mexico</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
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<td>General Law of Means of Communication</td>
</tr>
<tr>
<td>Nigeria</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>Shipping Policy Decree (1987)</td>
</tr>
<tr>
<td>Peru</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>1</td>
</tr>
<tr>
<td>Philippines</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>Governed by cargo and passenger regulations</td>
</tr>
<tr>
<td>South Korea</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>Korea Maritime &amp; Port Admin. Guidelines</td>
</tr>
<tr>
<td>Taiwan</td>
<td>x</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Maritime Transportation Law, Article 4 and 10</td>
</tr>
<tr>
<td>Thailand</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td>5</td>
<td>Thai Vessels Act</td>
</tr>
<tr>
<td>Uruguay</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>Law 12091 (1954)</td>
</tr>
<tr>
<td>Venezuela</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>5</td>
<td>Organic Customs Law; Law for the Protection and Development of the National Merchant Marine, Article 7</td>
</tr>
</tbody>
</table>

1= No information provided; 3 = Minor restrictions only; 4 = Indirect Benefits provided; 5 = Re-flagging allowable but controlled
3 Diversity of Cabotage Systems

Maritime cabotage laws and their regulations vary enormously from country to country. There are many models. Most cabotage systems share common points, but they also diverge in many areas. Cabotage systems can be categorised according to five key features:

1. **The strength and complexity of linkages between cabotage law and broader “cross cutting” national policy goals.** Integrated cabotage systems address a broad range of national policy goals spanning such key areas as industry, transport, defence, environment, training, employment and industrial relations. Integrated Cabotage systems are mutually supported by and reinforce other policy measures and regulatory frameworks. *Important areas for existing systems of cabotage is how cabotage supports and is supported by policy and regulatory frameworks addressing national shipbuilding, shipping subsidies and finance for maritime industry development, national defence preparedness.*

2. **Restrictions governing the ship registration, licensing, ownership and who can crew aboard approved ships.**

3. The extent to which regulations allow for the **reflagging of foreign vessels and/or the use of vessels not normally authorised for cabotage.**

4. **The types of maritime activities covered** by national cabotage systems: universal vs selective.

5. **Strength of institutional and political support** for cabotage

Sections 4 - 8 use case studies to show how these features help determine the shape of national maritime cabotage systems.
4 Integrated Cabotage: Strong complex linkages between cabotage law and “cross cutting” national policy goals

Cabotage is capable of supporting a broad range of national policy goals. Some national cabotage systems have narrow policy focuses. Other cabotage systems are part of more broader and integrated policy frameworks. Integrated Cabotage systems are used to support a broad range of policy goals such as:

- Development of maritime industry capacity,
- National security & defence preparedness,
- Parity of employment conditions with the other industries operating within national borders and legal frameworks,
- National transport, safety and environmental policy objectives.
- Merchant marine capability
- Foreign reserve earning capacity and retention of revenues through seafarer taxation

**Integrated cabotage systems** interact with other policy and administrative frameworks in mutually supporting ways. Because of the national importance of these overarching policy goals, cabotage law and regulations may be administered by Transport Departments or their agencies, but the policy directives are likely to be initiated elsewhere and higher up the policy making hierarchy.

USA, Brazil, Japan and Indonesia provide case studies of highly integrated cabotage systems with their own distinctive national characters. All four case studies demonstrate very different approaches arising out of unique historical, economic and political conditions. While the regulatory measures and policy devices differ, one common thread across all four is the objective of supporting domestic shipbuilding and repair industries.

**Japan** has a focus on providing greater maritime safety and orderliness in the market. Japanese cabotage laws have a unique emphasis on regulating competition and dealing with overcapacity in coastal shipping which is in the hands of many medium and small sized enterprises.

**Brazil** uses a mix of strategies including the purchasing policy of Petrobras (the major state controlled integrated energy corporation), taxation incentives, direct subsidies and cabotage to achieve a revitalised maritime capacity focusing on shipping, ship building and ports infrastructure. These are intended to bolster local industry and, at the same time, support investment, technological and skills transfer from some of the world’s largest ship builders, terminal operators and shipping companies.
**Indonesia** has recently embarked on an ambitious project using stronger cabotage laws, state purchasing, banking and insurance support measures and tax policy to support the growth of local shipping and ship building.

The explicit policy objectives of the **United States** of America’s cabotage laws is a national defence capability (naval auxiliary) and a well equipped merchant marine.

We examine cabotage in each of these countries below to see how cabotage regimes interact with other programs and policies to support overarching policy goals.

### 4.1 USA: A well equipped merchant marine for the purposes of national defence and the proper growth of US commerce.

Paragraph 861 of Section 27 of the Merchant Marine Act 1920 (Jones Act) explicitly outlines the national goals that the Jones Act addresses:

**§ 861. Purpose and policy of United States**

“It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.”

*Section 27, Merchant Marine Act, 1920*

Here, legislators leave no room for doubt that the primary objectives of US maritime cabotage are the creation of a naval auxiliary and the development of a well equipped merchant marine capable of carrying “the greater portion of its commerce”.

The Jones Act addresses these primary policy goals by reserving domestic cargoes for ships which are registered and built in the USA, operated by US corporations (with no more than 25%
foreign equity) and whose crewed mostly by citizens of the USA (75%). Under the Act, only USA shipbuilders can supply ships for the cabotage trade - foreign-built vessels cannot be sold or leased for use in US cabotage trade. The USA has been exempted from GATT rules for this legislative provision.

A number of other acts and regulations support the Jones Act fleet and the primary national policy goals the Jones Act supports. This mutually reinforcing set of policies and regulations demonstrates that the US legislators have held firm to the original policy intent for almost 90 years. Other main Acts, programmes and measures supporting the naval reserve status and general capabilities of the Jones Fleet include: Maritime Security Program, Voluntary Intermodal Sealift Agreement (VISA) program, Food Security Act, Ocean Freight Differential Program, tax benefits to ship leasers constructing ships in USA, and direct funding support to ship operators and shipbuilders from MARAD.

The **Maritime Security Program** directly subsidises US flagged vessels. The **Maritime Security Act** (2003) authorized over $1.7 billion over the ten years 2006-15 to support operations and readiness of 60 US flagged vessels.

The **Voluntary Intermodal Sealift Agreement (VISA) program** ensures access to commercial shipping during war or national emergencies. In 2007, 125 ships were enrolled in the VISA programme – more than three quarters of these ships being subsidised through the Maritime Security Programs. The policy hook is that ships participating in VISA get **priority for Department of Defence freight contracts**.

The **Food Security Act of 1985** requires that at least 75% of agricultural cargo under US DA and USAID overseas aid programmes are carried by US flagged vessels. Under the **Ocean Freight Differential program**, MARAD reimburses the USDA and USAID for the cost difference involved in using US flagged ships to carry more than half USA's public food-aid abroad. The Food Security Act also enables further reimbursement to the USDA if the total costs incurred by the USDA for ocean freight and OFD exceed 20% of the export value of the commodities exported.

4.2 **Brazil: Revitalising Ports, coastal shipping, shipbuilding & overall maritime industry capacity**

As with the USA, defence capability and maritime independence are important policy goals in Brazil. However, the Brazilian approach is very different from the USA case. The most significant difference between the US and Brazilian case studies is the Brazilian objective of
attracting investment from major overseas companies in shipping, logistics and terminal operations. Whereas the US cabotage has national security and defence preparedness as policy goals, the Brazilian cabotage system is part of a broader, multi-faceted approach to achieving the integrated development of shipping fleets, shipbuilding and port infrastructure.

The Brazilian system can be described as integrated, open and “developmental”. The Brazilian case study is perhaps the strongest example of cabotage playing an important supporting role in a multi-faceted set of mutually reinforcing policies aimed at the revitalisation of maritime industry. The Cabotage regulations provide strong taxation incentives and the opportunity for financial assistance to support the construction and servicing of vessels in Brazilian shipyards.

The cabotage policy framework in support of local shipping is buttressed by:

- **Use of the purchasing policies of the state owned (51%) integrated energy conglomerate, Petrobras**, to kickstart shipbuilding after an almost total extinguishing of capacity in the economic crises between 1985 and 95. This has involved investment of Billions of dollars in rigs, offshore support vessels and tankers through successive fleet modernisation programs. Petrobras is the sixth largest energy corporation in the world with extensive long term reserves of oil and gas in very deep seas. A steady and robust stream of projects are coming online over the next ten years guaranteeing Brazil self-sufficiency in oil and a continuing demand for more ships and rigs. There is a high level of integration between Petrobras’ capital expenditure programs and Brazilian government policies concerning ship building, the revitalisation of the merchant marine capacity and energy policy.

Petrobras will continue to play a strategic and central role in the resurgence of Brazilian maritime industry. The Petrobras ship build program has seen the re-opening of all Brazilian shipyards bar one and the construction of entirely new shipyards. Petrobras requires globally competitive pricing and state of the art technology in its supplier shipyards. A number of the world’s leading European and Asian builders have entered into joint ventures and technology agreements with Brazilian heavy engineers. Petrobras aims at 70% local content and is strategically committed to igniting the establishment of dense clusters of advanced local suppliers ensuring Petrobras has increased flexibility and independence of action.

- The programs of the Brazilian Development Bank (BNDES) which offers soft loans and up to 90% of finance for ship building and ship yard construction projects. The **Cabotage regulations** set up a special register for ship owners to qualify for these
loans, and funds are raised by a tax on cabotage and international sea freight

- Investment laws (Reporto) encouraging public-private partnerships aimed at expanding coastal port capacity and terminal throughput. These offer attractive tax incentives and range subsidies to investors. Container throughput grew at over 6% a year for most of the past decade and more recently in major private terminals had been growing at twice that rate.

- Brazilian Transport and environmental policy which aims at increasing the proportion of domestic freight carried by sea from 20 to 40% by 2020 using expanded and modernised coastal feeder shipping. There are dual policy goals here. Road transport is costly, relatively overused, has a much larger carbon footprint.

The Brazilian cabotage laws have been part of a suite of policies that have enabled subsidiaries of major European integrated terminal and shipping lines to establish a growing presence in Brazil’s coastal trade. Government policy is focused on modernising and expanding port capacity through a decade long program of port privatisation. This program has generated over $1.5 Billion in capital investment in the last decade. It has targeted those firms that will invest in both terminal infrastructure and shipping. Hamburg Sud (through its Brazilian subsidiary, Alianca) is the major container service provider. It is in competition with the giant global network terminal operator AP Moeller Maersk (which took over P&O Nedloyd operations in 2005) and more lately the giant French based CGM (announcing intentions to establish operations in December 2008). Major Brazilian firms are also growing in this market place – including Petrobras’ shipping subsidiary and Login Logica, a spinoff of Docenave, the shipping arm of the giant Brazilian mining company Vale.

**The features of Brazilian cabotage laws and regulations that support shipbuilding (and the broader maritime base) include:**

- A Brazilian shipping company can register Brazilian flagged vessels in the Special Brazilian Registry if it has ships under construction in a Brazilian shipyard. This allows the company to take advantage of funding provisions and tax benefits aimed at developing Brazilian shipbuilding. The company only needs employ Brazilian officers and bare boat charter of a foreign vessel is allowable until the replacement ship is completed.

- Work done on ships on the Special Brazilian Registry in Brazilian shipyards attracts the same tax benefits as exporters of industrial goods.
- Brazilian shipyards can get extremely favourable soft loans over extended periods from the Brazilian Development Bank ranging from 4% to 6% for up to 90% of project costs.

- An additional tax for merchant marine improvements (AFRMM) is levied on the freight charged in Brazilian ports - 10% of the cabotage freight. AFRMM raises funds for the Marine Fund (FMM) which is managed by the Brazilian Development Bank (BNDES) on behalf of the FMM and the Ministry of Transport. The FMM is used to finance both Brazilian ship construction and the construction of new shipyards. This tax has operated for many decades.

4.3 Japan: Optimising shipping volume, competition; employment & maritime safety

Japanese cabotage is reserved solely for Japanese flag carriers and covers both cargo and passengers. Entry of foreign capital is strictly prohibited. Foreign vessels only have limited access as part of reciprocal agreements through bilateral treaties. Coastal Shipping’s share of total domestic tonnage kilometres is high – around 42%.

Japan’s cabotage regime is enmeshed in a policy and regulatory framework that protects domestic markets, provides for maritime safety and employment, optimises tonnages and manages competition. This is set against a broader backdrop of strong national policy support for ship building, tax policies and direct subsidies to sustain Japanese maritime capacity. Coastal shipping is in the hands of thousands of small and medium sized businesses operating off a small capital base. Cargo Owners, Shipping operators/agents and Ship Owners are strictly separated. Coastal shipping involving ferry services, bulky goods, general cargo and fishing industries is a significant source of employment with special relevance to island communities. A highly regulated and closed system that supports small businesses through involvement in shipping associations ensures employment levels, orderly markets and seafarer and passenger safety.

Regulating tonnages and competition

For decades coastal shipping policy has concerned itself with the structural tendency for overproduction of shipping tonnages. This situation is exacerbated by an industry profile characterised by thousands of small and medium sized businesses and where ship ownership, shipping firms and users of maritime shipping are discrete and separate entities.

Since 1966, Coastal Shipping Law in Japan directly addressed the issue of controlling over production of ship volumes (tonnages). For the next thirty years a scrap and build policy was the
central plank of efforts to rein in shipping tonnages. The Coastal Shipping Law established a regulatory framework where:

- Market entry was tightly controlled and business foundation of operators was strengthened.
- Appropriate tonnage limits were set and shipping capacity adjusted accordingly by Shipping Associations to which smaller operators belonged; and
- And transaction terms were established and improved.

The system ceased operating well when building permits got from scrapping ships became tradeable assets and collateral for loans. Rather than eliminating surplus tonnage, this tended to encourage overcapacity.

<table>
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<th>Table 2: Schematic Representation of Regulatory Concerns in Japan’s Two Coastal Shipping Laws</th>
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<td><strong>Coastal Shipping Law</strong></td>
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<tr>
<td><strong>strengthening the business foundation of operators</strong></td>
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<tr>
<td>Tonnage meets requirement</td>
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<tr>
<td>Business plan</td>
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<tr>
<td>Can conduct business</td>
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<tr>
<td>Capital Backing</td>
</tr>
<tr>
<td><strong>adjusting shipping capacity</strong></td>
</tr>
<tr>
<td>Performed annually for next five years</td>
</tr>
<tr>
<td>Shipbuilding tonnage guidelines</td>
</tr>
<tr>
<td>Criteria for maximum tonnage</td>
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<tr>
<td><strong>Sets maximum tonnage</strong></td>
</tr>
<tr>
<td>If tonnage greatly exceeds appropriate tonnage</td>
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<tr>
<td>May set standard fees and rates</td>
</tr>
<tr>
<td>only if necessary to the sound development of coastal shipping.</td>
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In an effort to revitalise industry, the Coastal Shipping Tentative Measures Program replaced the old Scrap and Build scheme in 1998. Under this scheme, the Japan Federation of Coastal Shipping Associations extends a subsidy whenever an operator scraps capacity. This compensates for the loss of old (tradeable) Scrap & Build allotments and is intended to ensure operators do not suffer losses in working capital due to the dismantling of the S&B scheme. Diagram 1 below is a schematic depiction of financial transactions under the Coastal Shipping Tentative Measures Program. The Federation procures financial institution loans for the subsidy payable to the operator. These loans are repaid with payments from shipbuilders. Members planning to build ships must then transfer payments to the Federation of Coastal Shipping Associations according to the tonnage of the new ship. As of March 2007, subsidies
had been granted amounting to 122.7 billion yen\(^1\). The scheme is likely to continue till it breaks even – not likely till about 2015 Report on Maritime Affairs (July 2007)

Diagram 1: Schematic Outline of provisional measures for coastal shipping service - Coastal Shipping Tentative Measures Program

![Diagram](http://www.jpmac.or.jp/english/report_on_maritime_affairs/part2_chapter1.html)

The Coastal Shipping Project Law sets out how Optimum Ship Volumes for coastal shipping is determined taking into consideration the supply and demand of main coastal cargoes. The Optimum Ship Volumes are expressed as long and medium term guidelines. These guide the Minister of Land, Infrastructure and Transport on decisions about enforcing maximum tonnages which can lead to stopping any new shipbuilding permits.

**Maritime Safety**

The Seafarer’s Union and other supporters of Japanese cabotage maintain that a closed and regulated cabotage regime is the best way to promote maritime safety. In 2005/6 The Coastal Shipping Business Law was revised in order to improve transport security and maritime safety. The revised laws strengthened control over operators with respect to the preparation of safety plans and the appointment of officers responsible for safety.

**Subsidising remote island routes**

More than 400 of Japan’s 6,800 islands are inhabited. Cabotage shipping plays an important role not only in keeping island populations supplied with goods but also in providing adequate inter – island ferry services. The demand for cargo and number of ferry passengers is declining mainly due to population decreases in rural areas. As a result shipping struggles to maintain viable business operations in servicing remote islands. The Act for Improvement of Sea Routes

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at Remote Islands allows for the subsidization of ship operators servicing remote island populations. In 2006/7 alone, over 4.5 billion yen was paid out to cover shipping losses. Further funds have been made available for ship modification for elderly passengers.

**Support for shipping and ship building**

Japan is the world’s biggest ship builder. Various programs and laws support both shipbuilding and the modernization of Japanese merchant fleets. Tax incentives include up to 60% depreciation over five years on ships operated by Japanese companies.

### 4.4 Indonesia: Empowering shipping, Industry clusters, Training & Education, Ports Restructuring

In 2005, Susilo Bambang Yudhoyono issued Presidential instruction number 5 of 2005 with the intent of strengthening Indonesian shipping. The Decree called for a stricter and more uniformly applied form of national cabotage. By 2010, all cabotage trade is to be carried by Indonesian flagged vessels. A timetable for the application of cabotage to various commodities was announced incorporating rice, sugar, crude palm oil, wood, fertilizer, cement, vegetables and fruit, corn, soybeans, coal, oil and gas by 2009. Cabotage for containers was already achieved prior to 2005. In 2008, a new and comprehensive Shipping Law was introduced which gave legislative substance to many of the policy objectives in the President's 2005 decree.

At the time of the Decree, the 1988 Shipping Law provided the legal basis for a cabotage system that was unevenly applied and ineffectual in reserving domestic cargoes for Indonesian flagged ships. A collapse in Indonesian shipping market share had occurred soon after Presidential Decree 4/1985 which opened up 144 Indonesian ports to foreign ships. After the 2005 Policy Decree all but 21 of these ports were closed to foreign flagged vessels. The 1988 Shipping Law Regulation stipulated that ships engaged in cabotage trade should employ Indonesian crew. Subsidies were available for ships constructed in Indonesian shipyards for the cabotage trade and also for certain inter-island shipping. Foreign investment inter island shipping was allowed - in the form of joint ventures with Indonesian companies. Foreign share in any joint venture could be as high as 95%. Shipping Lines were allowed to use foreign flag vessels when local tonnage was not available.

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2 Report on Maritime Affairs, *Current State of Maritime Affairs and Tasks*, Japan Maritime Centre (July 2007); Chapter 1, Area of Maritime Transport, Passenger Transport

2005 Presidential Decree

The 2005 Decree was directed to thirteen ministers of the Indonesian government, state governors and mayors. It called on them to implement the cabotage framework consistently. The decree was not just about cabotage. It represented a whole of government approach to the transformation of Indonesian shipping and ports after decades of underdevelopment and the failure of previous policy regimes and systems of cabotage.

The decree required policy innovation and coordinated action across many areas of government as well as support from private sector, notably financial institutes and shippers themselves. The Coordinating Minister for the Economy was given responsibility for ensuring the decree was implemented with co-operation of Local and state government and the national portfolios of National development Planning, Transportation, Homeland, Industry, Commerce, Forestry, Education, Energy and Mineral Resources, Marine and Fisheries, State Enterprise, Co-operatives and Medium Enterprises.

The Presidential Decree outlined an integrated framework for future shipping policy in Indonesia.

The main areas addressed by the decree were:

**Cabotage and Import Cargo reservation**
- All domestic shipping to be carried by Indonesian flagged vessels and operated by Indonesian shipping companies
- All imports of government goods and services are to be carried by Indonesian Flagged vessels

**Taxation Policy (to promote investment in shipping and shipyards)**
- Restructure and improve tax policies to promote investment in ships and shipyards

**Financial Institutions & insurance**
- Encourage financial institutions (banking and non banking) to actively support the financing of maritime industry.
- Develop financial schemes that support national fleet growth
- Insure that all ships have adequate insurance – cargo hull & maintenance.

**Sea transport**
- All domestic sea transportation by national flagged ships
- New simpler processes for reflagging foreign vessels as Indonesian vessels
Incentives for fixed and regular routes
Dispensation of port call and bunker service fees
Accelerate signing of international conventions on Maritime Liens and Mortgages and Arrest of ship
Accelerate expansion of information forums and transparency on cargos, shipping capacity

Port
Restructuring of Port Operations and development of port infrastructure and facilities
Develop port management functions, separating regulator and operator functions
Encourage Inter terminal shipping competition
Restructuring to expand capacity of ports to handle exports
Restructure of port service to enable expansion of port capacities

Industry
Support growth & development of shipping industry
Establish Ship Design Centre
Develop Standards for Indonesian design and construction
Develop raw material inputs to ship building and ship component industries
Mechanisms and incentives for technology transfer and use of Indonesian ship yards for construction and repair
Maximise local content in shipbuilding by application of national, state and local government procurement policy

Energy & Minerals
Secure supply of fuels to national flagged vessels

Training & Education
Encourage Local Govt/Private Industry to develop centres for Maritime Education conforming to International Standards (IMO)
Develop co-operation between education providers, shipping service users to extend use and recognition of IMO standards

2008 Shipping Law
Almost 3 years after the Presidential decree of 2005, a new Indonesian Shipping Law was passed in April 2008. This detailed document covered a wide range of areas including navigation, environmental protection, sailor welfare, maritime accidents, human resource, the creation of a
coast guard, cabotage, port restructuring, financial laws covering the use of ships as collateral for bank loans.

The Law enforced the new cabotage requirements to be fully operational in 2011. Importantly it dealt with two areas of deficiency denying the full benefits of cabotage to Indonesian shipping: inadequate port infrastructure and unwillingness by Indonesian banks to make capital available for new ship builds. In 2008 the investment required in new Shipping as a consequence of new cabotage laws was estimated to be about Rp 34 trillion. Indonesian shippers have reported difficulty obtaining the necessary loans for the expansion of the Indonesian flagged fleet with foreign flagged vessels still accounting for 35% of domestic shipping.

The new law will decentralize the power over port management currently in the hands of four port management companies owned by the Indonesian government at the time of the Law’s enactment. It allows private investment in new port infrastructure. The government intends transforming publicly owned and operated ports into Landlord ports with the regulatory and privatized operational functions separated. ASEAN based investors are reportedly allowed to have up to 51% of capital in shipping and port operators providing a reciprocal offer from the investor's country of origin is made, and the foreign investor complies with the cabotage principles. Joint venture shipping companies must still fly the Indonesian flag with Indonesian crew if they want to operate in the country, but level of allowable overseas capital has been reduced from 95% to 51% and only ASEAN based companies are eligible for a controlling interest.

4.5 Australia and Canada: Less integrated systems

Australia and Canada share some similarities. Both are former British colonies and their cabotage systems are less integrated with broader national policy goals than is the case with the other case studies of USA, Japan, Brazil and Indonesia.

The Canadian Coasting Trade Act was introduced in 1992 after a number of enquiries and lengthy investigations into shipping law that spanned 20 years. The new Canadian Coasting Trade Act removed the concept of a ‘British Ship” and reserved the Canadian coasting trade to “duty paid” Canadian flagged and crewed vessels. The duty was a tariff of 25% payable on imported vessels. Unlike the taxes charged on freight in Brazil, the tariffs collected are not directed to any specialist shipbuilding fund – they simply go straight to consolidated revenue. The tariff is a defensive fund raising measure that goes some way towards protecting domestic facilities, but it is certainly not part of any comprehensive national policy aimed at developing shipbuilding and related supply industries.
The Australian legislation reflects the fact that in 1912, coastal shipping was dominated by British companies flying the British Red Ensign. The new federation was barely a decade old, and out of deference, legislators did nothing to interrupt the status quo. The Australian system is unique and simple - it is based on legislation that is almost 100 years old that in essence requires that crews on licensed ships for the coastal trade be paid prevailing Australian wages. There is no requirement to fly any national flag, due to the British legacy. Nor is the Australian Navigation Act 1912, concerned in any significant way with broader “cross cutting” policy issues. The Act does not specify any policy objectives – an omission identified by a recent review of the Act.

In recent years a conservative government has removed incentives such as investment allowances and accelerated depreciation measures for shipping. Furthermore, it liberalised the permit system allowing access to the cabotage market by unlicensed ships much easier. In 2006/7, fully thirty percent of all coastal tonnages was carried by unlicensed foreign ships using temporary permits.

The relative lack of integration with broader national policy goals has given rise to a great deal of discussion and debate about shipping policy in Australia. An incoming Labor government has committed itself to strengthening Coastal Shipping. An independent inquiry for the ASA headed by two former federal ministers for shipping recommended a tonnage tax and other measures to strengthen shipping. A Parliamentary enquiry in coastal shipping has published a report making various recommendations and referring to broader policy goals such as defence support and achieving a modal shift to coastal cargo shipping on environmental grounds. However, these recommendations and discussion papers are only small steps along a long road towards an integrated national policy framework in which cabotage plays a role in Australia. For the time being, Australia’s cabotage system is hanging in the breeze, disconnected from any major policy goals.
5 Ownership, flagging and special crewing requirements

5.1 Crewing Requirements

Most cabotage regimes place restrictions on the make-up of crews. There are four ways in which cabotage regimes specify crewing requirements:

- **All crew must be nationals.** Many nations require 100% of the crew to be citizens. These include Japan, Mexico, Argentina, Chile, Philippines and Canada.

- **A significant proportion of crew must be nationals.** Many other nations do not require the full complement of crew to be nationals. Proportions vary from a minimum of 80% (Columbia and Peru) to a minimum of 50% (Thailand and Uruguay). At least 75% of crews employed aboard the Jones Act fleet must be US Citizens or permanent residents. Brazil requires at least two thirds of the ratings to be nationals, except in where the ship is on the Special Register.

- **Ships Master and Officers required to be Nationals.** Only a few countries do not have nationality requirements for ratings. Brazil operates an optional Special Register (REB), for ships where orders have been placed for replacement vessels with Brazilian shipyard. Registration on the REB opens up a range of subsidies, tax concessions and other benefits which operate basically as incentives for overseas companies to establish subsidiary operations in Brazil and use ships constructed in Brazilian shipyards. One such concession is the removal of the requirement to employ Brazilian ratings. In this situation, until the Brazilian constructed boat is completed, an overseas sourced vessel can be chartered and registered (reflagged) with full complement of foreign crew so long as the master and officers are Brazilian. Turkey only requires the Ships master and Officers to be nationals.

- **No nationality requirement for crew members.** The Australian cabotage system is quite unique. Its only requirement is that all licensed ships pay the going Australian rates while licensed to operate cabotage services. This is a minimalist position aimed at ensuring wage justice for seafarers employed in licensed shipping.

5.2 Ownership Restrictions

As with crewing requirements, ownership restrictions vary from country to country. Generally, where the owner is a natural person or persons, citizenship or permanent residence is required.
In the case of corporate ownership (legal person), access to cabotage is usually available if the operating company is registered legally in the country. Differences emerge, however, in relationship to limitations placed on foreign direct investment. Here there are three broad categories:

- **No foreign equity allowable.**  
  *Japan* requires 100% equity in any ships

- **Restricted foreign equity** – requiring majority national equity.  
  This seems to be the most common form of restriction. *USA* (25% maximum) *Chile* (50%), *Mexico* (49%), *Peru* (49%), *Philippines* (40%), *Indonesia* (51% - other ASEAN members), *Thailand* (30%), *Turkey* (49%), and *Uruguay* (49%) are examples of countries all providing some restriction on foreign direct investment in companies/joint ventures registered locally and providing cabotage services.

- **No limits** on foreign equity  
  *Australia, Canada and Brazil* do not impose any limits on foreign investment in cabotage shipping operators.

### 5.3 Flagging Requirements

With the single exception of *Australia*, all nations require that, in principle, authorised cabotage shipping fly the national flag. As we see in section below, exceptions are made in many countries when no suitable nationally flagged ship is available.

**Ref flagging**

Some countries permit the use of foreign ships on bareboat charter after reflagging. Nations offering reflagging and chartering options include: *Brazil, Peru* (with mandatory purchase option) and *Indonesia* (1988 legislation). *Mexico* and *Ecuador* require foreign vessels to reflag if they are temporarily permitted to engage in cabotage because of a lack of suitable nationally registered ships.

### 5.4 Other Limitations and Requirements

Other limitations include:

- Capital requirements, to ensure that companies are not undercapitalised. Countries specifying minimum capital backing include *Japan and Brazil*.

- Tariff payments – *Canada requires a 25% duty payment on cost of imported ships*; duty paid ships have preference over non-duty paid ships in cabotage services.
- **Nationality of directors and executive staff.** A number of companies place requirements on the nationality of Board members and executive staff as well as limiting foreign direct investment.
- A number of South American countries require that companies **own at least one ship** that is capable, both technically and legally, of participating in cabotage before the company can register any ship in the coastal trade. In the case of Argentina, an **order placed with an Argentinian shipyard** will qualify a company to register a ship for cabotage. The requirement to own just one ship enables the company to the bareboat leasing others.

USA requires that ships are **built and repaired in the USA.**

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**Table 3 Summary of Restrictions on Cabotage: Ownership, Crewing & Flags**

<table>
<thead>
<tr>
<th>Country</th>
<th>Crewing Requirements</th>
<th>Licensing &amp; Ownership Restrictions applied to cabotage vessels</th>
<th>Flag restrictions applied to cabotage</th>
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</thead>
</table>
| Argentina | 1. Foreign-flag vessels must have exclusively Argentine crews  
2. companies legally established in Argentina and registered as a ship owner (having at least one ship) in the National Ship owners Register, or which have concluded a shipbuilding contract with an Argentine shipyard | 1. Vessel must be owned by permanent Argentine residents or   
2. Vessel must be owned by permanent Argentine residents or   
2. companies legally established in Argentina and registered as a ship owner (having at least one ship) in the National Ship owners Register, or which have concluded a shipbuilding contract with an Argentine shipyard | 1. Reserved for Argentine-flag vessels. |
| Australia | 1. No restriction on nationality of the crew  
2. crew must be paid Australian wages when engaged in the coasting trade  
3. crew must have access to the ship’s library for passengers if no library for the crew exists | 1. foreign owned vessels are able to operate on the Australian coast  
2. Ship must be licensed (in practice up to 1 year) to engage in the coasting trade.  
3. the ship must not be receiving any subsidy from a foreign Government  
4. a licensed ship operating on the coast can also participate in foreign trade | 1. No restriction - cargo preferences are not linked to the flag of a ship but to the payment of Australian wages since up to 1982, Australian Ships were registered as British Ships. |
| Brazil | 1. The captain, the chief engineer, and two thirds of the crew of a Brazilian flag vessel, must be Brazilian nationals;  
2. On Special Brazilian Registry (REB) ships, the captain and the chief engineer must be Brazilian nationals | 1. vessels must be operated by a:  
⇒ Brazilian national or  
⇒ Brazilian shipping company (EBN). To operate as an EBN a firm must be legally established in the country and own at least one ship technically adequate for the trade envisaged.  
2. A minimum liquid capital of R$6 million is required for cabotage, and R$2.5 million for port or maritime support navigation.  
3. There are no restrictions on the national origin of the capital. | 1. Restricted to Brazilian flag vessels  
2. Brazilian ships must be registered in the Registry of Maritime Property  
3. Brazilian flag vessels may also be registered in the Special Brazilian Registry (REB). The REB option is offered to EBNs having ships under construction in a Brazilian shipyard. REB ships receive benefits designed to foster shipbuilding development |
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</table>
| Canada    | 1. must be operated by Canadian officers and a Canadian crew, holding Canadian certificates | 1. To register a ship the owner must be a:  
- Canadian citizen and permanent resident; or  
- A corporation incorporated under federal or provincial laws (regardless of the origin of capital).  
2. foreign corporations may register a ship if:  
- the ship is not registered in another country; and  
- if a subsidiary of the corporation acting on its behalf is incorporated in Canada, | 1. coasting trade restricted to duty-paid, Canadian-registered ships |
| Chile     | o 100 percent Chilean nationals                                                      | o Only a Chilean national or company incorporated in Chile is allowed to register a ship in Chile.  
- Ships owned by foreigners may be registered as Chilean if:  
  - The foreigners are domiciled in Chile,  
  - The principal location of their business is Chile; or  
  - They exercise permanently a profession in Chile.  
- The chairperson, managers, and directors of such a shipping company must be Chilean, and more than 50% of the capital of the company must be owned by Chileans. | o cabotage is reserved for Chilean enterprises |
| Colombia  | o The captain, officers and 80 per cent of the rest of the crew of Colombian-registered vessels must be of Colombian nationality | o Access to the cabotage is restricted to companies composed of natural persons whose main domicile is in Colombia or legal persons established in Colombia.  
- a company must have at least one Colombian-registered vessel  
- Both Colombian and foreign companies require an authorization and an operating permit.  
- The authorization and operating permit are given for an indefinite period and for specified service  
- The authorization and operating permit are granted automatically within 90 days | o Cabotage services should be supplied by Colombian-registered ships |
| Japan     | o 100% Japanese crew                                                                 | o Foreign capital is prohibited  
- Permit system vessels of 100 tons or more entering cabotage trade.  
- To get a permit:  
  at least three vessels must be in use; owned vessels (or bareboats) must account for at least 60 percent of vessel use.  
- Up till 1998 participate in scrap and build system, changes in operations require shippers to dispose of vessels in numbers that fit plans. Specifically, this means getting rid of one's own vessels, or purchasing more needed vessels | o Cabotage restrictions generally allow only Japanese-flag carriers to carry cargo and passengers between Japanese ports  
- Limited reciprocal agreements |
| Mexico    | o Mexican Crew                                                                       | o reserve cabotage for Mexican ship-owners  
- Foreign investment in the maritime transport sector is limited to a maximum of 49 per cent of total with the exception of tourism cruise ships, and certain port operations such as dredging. | o Only Mexican Flag |
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| Peru    | o Peruvian-registered ships must have a Peruvian captain, except in exceptional circumstances, and at least 80 per cent of the crew must be Peruvian nationals. | o A Peruvian ship owner or Peruvian shipping company be a natural or legal person of Peruvian nationality established in Peru, with its principal domicile, and actual and effective head office in Peru.  
o For legal persons, at least 51 per cent of the paid-up equity must be held by Peruvian nationals.  
o The chairman of the board of directors, the majority of directors and the chief executive officer must be of Peruvian nationality and reside in Peru | o Cabotage is reserved for:  
▪ Peruvian-registered merchant vessels belonging to Peruvian ship owners or  
▪ Peruvian shipping companies or operating under financial leasing or  
▪ Bareboat charter arrangements with a mandatory purchasing option.  
o For security and national defence, a minimum of 25 % hydrocarbons cargoes are reserved for Peru’s navy |
| Philippines | o Philippine-registered vessels must be crewed by Filipinos except in approved cases where a "supernumerary" may be allowed for up to six months, provided the functions performed are not those of the crew and do not interfere with the ship's management. | o Only Filipino nationals or locally incorporated entities are authorized  
o National (including inter-island) shipping is limited to Philippine-flagged and owned vessels engaged in domestic trade  
o 40% maximum foreign equity | o National (including inter-island) shipping is limited to Philippine-flagged and owned vessels engaged in domestic trade |
| Thailand | o The Thai Vessels Act B.E. 2481 requires that Thai domestic vessels have at least 50% Thai crew. | o Cabotage restrictions reserve domestic shipping for national security reasons to Thai-flagged vessels that are owned by Thai nationals or companies with at least 70% Thai equity.  
o A company with less than 70% Thai equity may hire a "Thai flagged" vessel to provide domestic shipping services. | o Cabotage restrictions reserve domestic shipping for national security reasons to Thai-flagged vessels |
| Turkey | o Crew must be Turkish of Ships on Turkish National Registry must be Turkish | o In order to fly the Turkish flag, on the National Ship Registry, shipping companies must be 51% owned by Turkish nationals (Commercial Law No. 6762)  
o Legal persons, the majority of whose Board of Directors are of Turkish nationality; and  
o Trading companies, the majority of whose managerial staff and representatives are of Turkish nationality and are registered on the Turkish Trade Register | o Merchant maritime transport and passenger services, pilotage, and all other port services can be provided only by Turkish flag |
| Uruguay | o At least 50 per cent of the crew must be Uruguayan citizens either by birth or naturalized, including the captain | o Vessels providing cabotage services in Uruguay must meet the following requirements if:  
▪ they are owned by natural persons, they must be owned by Uruguayan nationals domiciled in Uruguay; and  
▪ if they are owned by a company: (i) 51 per cent of the owners of the company must be Uruguayan citizens; (ii) 51 per cent of the shares with voting rights must be owned by Uruguayan citizens; and (iii) the company must be controlled and managed by Uruguayan citizens. | o Cabotage trade are reserved to Uruguayan-registered vessels |
### Table 3 Summary of Restrictions on Cabotage: Ownership, Crewing & Flags (continued)

<table>
<thead>
<tr>
<th>Country</th>
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<th>Licensing &amp; Ownership Restrictions applied to cabotage vessels</th>
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</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>o US crew</td>
<td>o Ships must be owned by a U.S. corporation, - 75% US equity</td>
<td>o Ships must fly American flag, be</td>
</tr>
<tr>
<td></td>
<td>o 75% of the employees must be U.S. citizens.</td>
<td>required</td>
<td>registered and built in the United</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>States and owned by a U.S. corporation,</td>
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6 Waivers and permits for foreign vessels

Few national fleets are capable of delivering the full range of shipping services required to meet the task of domestic maritime commerce and coastal shipping. For this reason, most cabotage regimes allow exemptions to be made and allow the granting of temporary permits for ships not normally licensed for maritime cabotage. In most cases, these permits will be for foreign flagged ships or, in some cases, for bare boat chartering of foreign vessels reflagged with the relevant national flag. In some countries such as in the Philippines, separate registers are maintained for national flagged ships engaged in deep sea trade and those engaged in cabotage trade. In such cases, temporary permits can also be required for national flagged ships registered for the international trade to engage in cabotage.

Very broadly we identify two types of cabotage:

- Closed systems where waivers or permits are difficult to obtain and national flagships perform most (or all) of the coastal shipping task; and
- Open systems where foreign vessels are required due to deficiencies within domestic fleets.

Both these systems are examined briefly below with reference to case studies. Table 4 summarises the conditions for waivers, permits or exemptions in a selection of countries.

Closed Cabotage Systems

Japan and USA operate the most closed cabotage regimes. Both Japanese and US cabotage is strictly enforced. It is very difficult for foreign ships to access coastal and island trade in both these countries. In the USA, there are a limited range of conditions under which waivers are available. In recent times, this has occurred only during national emergencies such as Hurricane Rita and Katrina. In these cases, the President waived the Act to enable transport of energy cargoes. However the pro-cabotage lobby successfully demonstrated that US Jones Act Fleet ships were available and ready for service and subsequently protocols have been developed with DOE and marine administrators to ensure that such waivers are not issued in the future if Jones Act ships are available. Consequently, when oil production in the gulf was again interrupted by extreme weather in 2008, no waivers were issued. There are also some special cases involving transport to and from overseas US territories - these are listed in Table 4 below.
Open systems

Open cabotage systems allow foreign vessels to participate in cabotage under less strict conditions than is the case in closed systems. The conditions for the granting waivers and the terms under which they are issued vary markedly – but a threshold issue is usually the non-availability of a suitable ship authorised for the cabotage trade. Two major causes of the granting of exemptions are 1) overcoming shortages of specialist offshore support vessels, tankers, exploration and floating production rigs in oil and gas E&P and 2) easing bottlenecks in major container hubs.

We can further subdivide open systems into semi-open and very-open regimes. The semi-open systems treat the granting of waivers and exemptions very seriously. In some of these cases, most authorisations of foreign ships are usually restricted to specialist ships or specific sectors (such as oil exploration & production). In such cases there are strict terms and conditions applied. In the case of Mexico and Canada the very different systems are transparent and subject to public scrutiny.

Semi-open systems

Examples of countries operating semi-open cabotage regimes include: Mexico, Brazil, Canada, Ecuador, Chile and Thailand. In the case of Mexico and Chile, authorisation is gained for the use of foreign vessels only after a public bidding process has exhausted the possibility of national ships being available. Foreign shipping companies cannot gain permits. Temporary permits are only available to Mexican ship – owners.

In the case of Ecuador, authorisation may be obtained by a national shipping company to rent or lease out foreign vessels on a bareboat charter basis only in exceptional circumstances. Bare boat chartering ensures the use of national crew and can involve reflagging under the national flag. Some Andean Community countries give preference to other CAN ships if a national ship is unavailable. The boxed case study of Mexico, below, illustrates how the public tendering process operates in Mexico.
Case Study 1
Mexico: Public Bidding Process to Ensure Priority to Mexican Ships and Crew

Around 500 temporary cabotage permits are granted every year to foreign vessels – mostly offshore support vessels engaged in the oil industry. Foreign vessels may engage in cabotage only when there are no Mexican-flagged vessels available. These permits are granted by the General Directorate for Ports and Merchant Marine.

A special two stage bidding process is used to award these temporary permits.

In the first stage, only Mexican ship owners may participate. Mexican ship owners with foreign vessels under a bareboat charter (under this assumption the whole crew must be Mexican) are given top priority. Second priority is given to Mexican ship owners with foreign vessels under any other charter agreement – priority within this group is given to the vessel having a higher number of Mexican crew members.

If the first stage provides no suitable vessels, the second stage takes place in which foreigners with foreign vessels may participate.

Temporary cabotage permits apply for three months and can be renewed up to seven times. After two years of operation on a temporary permit, a vessel must be reflagged Mexican if it is to operate in Mexican waters.

In the case of “unique” vessels temporary permits can be extended for longer periods. According to new draft bill of Regulations to the Navigation and Maritime Trade Law, a technical commission is to determine on a case by case basis if a vessel or naval artifact is unique due to its degree of specialisation. In its current form, the following criteria will be used to determine if a vessel is unique:

(i) The state of technology in the international market;
(ii) The availability of technology in the international market; and,
(iii) Construction and equipment reports in respect of vessels and naval artifacts that may be considered as extraordinary.
**Case Study 2**

**Canada: Transparent Investigation into availability of Canadian Ships**

Under Canada's *Coasting Trade Act*, a temporary license is required to operate a foreign registered or a non-duty paid Canadian registered vessel in the coasting trade (this includes dredging, towing, drilling and offshore support activities such as diving). The Canadian Transportation Agency decides whether a suitable Canadian vessel(s) is available. In the case of passenger vessels, the CTA decides if a similar (and adequate) Canadian operated service is available.

A company wishing to get authorization to use a foreign registered vessel (or a non-duty paid Canadian vessel) in the Canadian coasting trade follows the following steps:

1. Application is made to the Canada Border Services Agency (CBSA) for authorization to bring the vessel into Canadian waters for a specific activity.

2. A copy of the application is submitted to the CTA.

3. CTA issues a request for offers of Canadian vessels to ship owners and operators in the region where the activity is to take place. Offers must be filed by a specified date. The applicant can comment on any offer received.

4. If no offers of Canadian vessels are received, the Agency advises CBSA which then issues a letter of authorization to the applicant to use the foreign registered vessel in Canadian waters.

5. If offers of Canadian vessels are made, the Agency assesses whether the vessels are suitable and available. The Agency examines economic, technical and commercial aspects of the use of Canadian vessels versus the use of the foreign registered vessel. Once this assessment has been completed, the Agency makes a ruling and advises CBSA whether or not suitable Canadian vessels are available. The CBSA then issues an authorization or refusal to use the foreign registered vessel.

Details of CTA rulings are available on the internet. In the six years between 2003 – 2008 inclusive, the CTA made just over 200 rulings on licence applications for foreign vessels. One quarter of these rulings were made in 2008. In 2008, Almost three quarters of all temporary licence applications were for oil and asphalt tankers, offshore support vessels, mobile offshore drilling units and geotechnical survey and seismic research vessels associated with oil exploration, production and distribution in the West Atlantic fields. In 2008, Almost half licence applications were for use of foreign oil and asphalt tankers operating out of the Newfoundland and New Brunswick terminals. A further ten percent of license applications related to specialist optic cable laying vessels operating off Canada’s east coast. Between 2003 and 2008 inclusive, just 10 temporary license applications out of 200 were rejected because suitable Canadian ships were available. The types of vessels involved in these applications were oil tankers, bulk salt carriers, seismic research, dredging and cable laying vessels. Another 10 applications were granted after rejection of claims by Canadian shipping firms to have suitable ships available.

In the both the Mexican and Canadian case studies, most temporary licenses are issued to vessels involved in oil industry operations such as tankers, specialist offshore support vessels, mobile rigs and geotechnical survey or seismic research vessels. Brazil has targeted these kinds of vessels for local builds using incentives built into cabotage regulations and the purchasing policies of Petrobras.
In Brazil, foreign vessels can only operate in cabotage, interior navigation, and navigation within ports when chartered by an EBN (Brazilian Shipping Company). The EBN must obtain special authorization to charter a foreign vessel. Authorizations may be granted only if:

- A Brazilian flag vessel of the required type is not available;
- There is declared public interest; or
- If the foreign vessel substitutes for one that is under construction in Brazil

“Very Open” Cabotage

For the purposes of this report we have coined the term “very open cabotage” to describe a type of open cabotage system where at least one of the following conditions are met:

- Authorisation of foreign ships to operate on the cabotage trade is relatively easy to obtain; and/or,
- Domestic shipping capacity is so underdeveloped in relation to the shipping task, that a significant number of foreign vessels are required to meet demands of local trading.

Until very recently, Indonesia could be considered a “very open” regime based on the high levels of foreign shipping engaged in coastal and inter island shipping. In Australia, the progressive liberalisation of permit requirements for unlicensed ships has created a situation where an increasingly significant share of domestic shipping is being undertaken by unlicensed foreign shipping competing on unfair terms with the domestic fleet.

Australia

In Australia, the Minister for transport may issue temporary permits for ships (without licenses for cabotage) to engage in coasting trade. Licenses may be granted where:

- No licensed ship is available; or
- That the service as carried out by the licensed ships is inadequate; and,
- The Minister is satisfied that it is in the public interest to do so.

Once an application for a permit is received, the Transport Department checks with all relevant licensed ship operators, unions, industry and professional organisations in order to determine if any suitable licensed ships are available. Delivery requirements are taken into account in determining availability – cargo should be delivered in “a timely, sound and uncontaminated condition” A licensed ship must be able to meet any supply, production or service obligations specified in the application for the use of non licensed ship. The schedule for cargo delivery should meet the “reasonable needs of the shipper”. Availability depends on the cargo being able to be shipped three days either side of the date set out in the application. The existence of any contractual arrangements
giving other shippers priority may also lead to the licensed vessel being deemed unavailable. The
definition of adequacy of service turns on the suitability of the vessel with respect to “the reasonable
delivery requirements of the shipper, the carrier’s ability to supply necessary equipment (eg
containers or bolsters), technical characteristics of the ship in question and capacity of the ship to
transport cargo safely”. The licensed ship must also be available “on reasonable commercial terms.”
The definition of public interest includes reference to maritime safety requirements and “risk to
Australia's marine environment”.

**Single Voyage Permits** (SVPs) are granted where a suitable licensed ships unavailable on a one-off basis. An SVP is issued for a specific vessel, cargo, journey between ports, loading and sailing schedule. **Continuing Voyage Permits** (CVPs) are granted when suitable licensed ships are unavailable over an extended period. They can be issued for periods of up to 3 months and must comply with Australian customs, quarantine and immigration requirements.

Since the very early 1990s there has been a relaxing of administrative guidelines specifying under which conditions permits could be granted. This process gathered pace under the conservative Government in power between 1996 and 2007. The liberalization of cabotage arrangements was part of a broader policy framework of a government which failed to recognize any strategic role for Australian shipping. This policy orientation stemmed from the perception of Australia, by the government of the day, as a “purchaser of shipping services”. As such, it opposed any financial assistance or programmatic support to shipping and undertook a number of measures which undermined Australian shipping (both international and coastal) including the abolition of capital grants and accelerated depreciation for ship purchases.

In 2003, the Australian Shipowners Association commissioned an Independent Review of Australian Shipping prepared by two former Federal Ministers of Transport. The review reported finding “overwhelming evidence that over the past few years the criteria [for issuing permits] have been administered in such a way that the coastal trade could now be regarded as virtually deregulated.”

The government’s position was articulated clearly in March 1999, when the then Minister for Transport and Regional Services, summarised the Governments policy towards shipping:

“**Key among this Governments shipping policies have been privatisation of the Government-owned shipping line.........the removal of ad hoc support measures for shipping which did not contribute to the development of an efficient fleet, the winding back of cabotage, an end to outdated industry employment practices on vessels, and the modernisation of shipping legislation”**

After 1997, the tonnages carried by ships under permits increased dramatically as the Government undermined domestic cabotage by increasing the number of SVPs and CVPs. In 1996/7, cargo
transported under permits accounted for just under 10% of coastal trade measured in total tonnage. By 2006/7, the share total tonnage carried by permit ships had lifted to around 30% (see Graph x below). Over the decade, permit tonnages increased fourfold from around 4 million tones to 16 million tonnes, while total tonnage grew very modestly from around 50 million to 56 million tonnes.

An increasing number of ships operate with temporary permits and enjoy significant competitive advantages over the licensed coastal ships. The 2003 independent enquiry into Australian Shipping summed up very neatly the range of market factors undermining the cabotage trade and the capacity of Australian licensed operators to compete with foreign ships operating under temporary permits:

“The interaction of a number of different pieces of legislation causes a competitive disadvantage to Australian operators whose ships operate permanently on coastal trades compared to the less onerous regulatory environment applicable to foreign vessels that work on the coast under permits. The impact has been exacerbated by ad hoc steps taken to liberalise the coastal shipping market for non-Australian operators without taking into account the competitive disadvantage imposed on Australian operators. Such vessels are not burdened by the Australian tax system, employment conditions and employee costs. The permit system is administered within guidelines that have anti-competitive consequences. There are also wide social policy questions such as the ability of foreign labour to work in foreign vessels in an Australian domestic industry for extended periods. There is no doubt that foreign operators intent on utilising such a provision will retain foreign labour in the Australian domestic transport industry for as long as they are allowed to. The provisions of the Navigation Act 1912 that regulate the conduct of coastal shipping should be reviewed. The review should have regard to transport, customs, immigration, taxation, workplace relations, competition and other relevant policy considerations.”
Indonesia

Covering a sea area of almost 8 million square kilometers and comprising 17,000 islands, Indonesia is the largest archipelago in the world. The strategic and economic importance of sea transport and maritime industry is difficult to understate - Indonesia depends on sea transport not only for international trade but for much of it’s inter island domestic cargoes as well.

For several decades, the Indonesian Government has relied in part on cabotage laws for the development of domestic shipping. The shipping Laws of 1988 not only reserved coastal shipping for Indonesian-flag vessels, it also stipulated that ships be crewed by Indonesians, provided operating subsidies on some shipping routes and provided some support for local ship construction.

These laws however proved ineffective in practice and were inconsistently applied. Furthermore, they operated in a context where over 140 ports were open to foreign shipping and up to 95% direct foreign investment was allowed in shipping joint ventures. Exemptions were easily obtained allowing the chartering of foreign ships when local vessels were not available. While cabotage
effective in covering container cargoes and timber it was less effective in relation to a wide range of agricultural products as well as liquid and bulk commodities such as oil and coal.

As a result of the poor performance of older, more liberal and less comprehensive shipping laws, the 2008 shipping laws bought in a package of better integrated and wider ranging regulations including a strengthening of existing cabotage law.

Cabotage changes since the Presidential decree of 2005 (which foreshadowed the 2008 Law) have led to an increase in Indonesian shipping ad the reflagging of a proportion of foreign vessels. Nevertheless, despite these improvements, Indonesian flagged vessels still carried slightly less than two thirds of domestic shipping by the end of 2007. Authorities have estimated that the Indonesian fleet will have to grow in number by more than 650 additional vessels at a cost around US $4.6 Billion if objectives of the legislation are to be realized. Senior union officials have criticized shippers for disregarding the new laws and continuing to charter foreign vessels.

The new Shipping Law intends to make bank loans more likely for new ships by enabling an existing ship to be used as collateral for loans. The international financial crisis has however made it very difficult to obtain credit for ship building. On the other hand, there is a looming global oversupply in many kinds of shipping - including bulk carriers - which may make ships more affordable.

The success or otherwise of the new Indonesian laws cannot be judged for at least another 5 years. In the meantime, Indonesia continues to operate a “very open” regime where around one third of domestic shipping task is undertaken by chartered foreign vessels. This is likely to change if Indonesia is successful in getting most of the tonnages of domestically traded coal and oil transported by Indonesian flagged vessels.
<table>
<thead>
<tr>
<th>Country</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ARGENTINA</strong></td>
<td>1. If no Argentine units capable of providing them.</td>
</tr>
<tr>
<td>National Executive</td>
<td></td>
</tr>
<tr>
<td><strong>AUSTRALIA</strong></td>
<td>1. No suitable licensed ship available or</td>
</tr>
<tr>
<td>Minister for Transport</td>
<td>2. Services provided by a licensed ship are considered inadequate</td>
</tr>
<tr>
<td></td>
<td>3. Unlicensed ship meets the &quot;public interest&quot; requirement</td>
</tr>
<tr>
<td></td>
<td>4. &quot;Public interest&quot; is assessed on a case-by-case basis</td>
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<tr>
<td></td>
<td>5. Permits are almost always related to foreign-flagged vessels – Vessels with permits</td>
</tr>
<tr>
<td></td>
<td>carried 24% of coastal tonnage in 2003/04, and performed 32% of coastal tonne-kilometres.</td>
</tr>
<tr>
<td></td>
<td>6. Single voyage or continuing permit</td>
</tr>
<tr>
<td><strong>BRAZIL</strong></td>
<td>1. If a Brazilian flag vessel is not available, or</td>
</tr>
<tr>
<td></td>
<td>2. If there is declared public interest, or</td>
</tr>
<tr>
<td></td>
<td>3. If the foreign vessel substitutes for one that is under construction in Brazil.</td>
</tr>
<tr>
<td></td>
<td>4. Foreign vessels are only allowed to engage in cabotage, when chartered by an EBN, for which authorization is required.</td>
</tr>
<tr>
<td><strong>CANADA</strong></td>
<td>1. No Canadian registered duty-paid ship is available or suitable to carry out the activity and</td>
</tr>
<tr>
<td></td>
<td>2. Where the activity entails the carriage of passengers, an identical or similar marine service is not available.</td>
</tr>
<tr>
<td><strong>CHILE</strong></td>
<td>1. For cargo inferior to 900 tonnes, foreign vessels may also be used when no Chilean vessel is available.</td>
</tr>
<tr>
<td></td>
<td>2. Foreign vessels are allowed to engage in cabotage of empty containers under the principle of reciprocity.</td>
</tr>
<tr>
<td><strong>COLUMBIA</strong></td>
<td>1. Companies may lease or charter foreign-registered vessels provided that they obtain authorization</td>
</tr>
<tr>
<td>DIMAR (regulator of Maritime activity)</td>
<td>2. An authorization and an operating permit are required to provide maritime transport services - applies both to Colombian and foreign companies.</td>
</tr>
<tr>
<td></td>
<td>3. Operating permit is for an indefinite period and for specified types of service, namely, general transport services, container transport, bulk transport, passenger transport, or combined transport; they may not be assigned.</td>
</tr>
<tr>
<td><strong>ECUADOR</strong></td>
<td>1. Authorisation required for national shipping companies to lease or rent out vessels of other flags on a bareboat charter basis &quot;in exceptional cases&quot;</td>
</tr>
<tr>
<td>Merchant Marine and Coastal General Directorate</td>
<td>2. Temporary lack of transport capacity;</td>
</tr>
<tr>
<td></td>
<td>3. Total or structural loss of a vessel;</td>
</tr>
<tr>
<td></td>
<td>4. Major repairs to a vessel lasting over six months;</td>
</tr>
<tr>
<td></td>
<td>5. Transport of specialized products;</td>
</tr>
<tr>
<td><strong>HONDURAS</strong></td>
<td>1. Where there are no Honduran merchant vessels or they are not available, and</td>
</tr>
<tr>
<td>the Directorate-General of the National Merchant Marine</td>
<td>2. For as long as those circumstances persist,</td>
</tr>
<tr>
<td></td>
<td>3. Preference to Central American flag as the Foreign Flag of authorised ship</td>
</tr>
<tr>
<td><strong>INDIA</strong></td>
<td>1. When no Indian-flag vessel is available.</td>
</tr>
<tr>
<td></td>
<td>2. Occasional relaxation (92 -97; 2005) for container vessels, lashing barges</td>
</tr>
<tr>
<td><strong>INDONESIA</strong></td>
<td>1. Certain limitations when local flag tonnage is not available.</td>
</tr>
</tbody>
</table>
Table 4  Summary Conditions of Waivers & Exemptions (select countries) – cont’d

<table>
<thead>
<tr>
<th>Country</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEXICO</td>
<td>1. If there are no Mexican vessels available under similar technical conditions.</td>
</tr>
<tr>
<td>SCT</td>
<td>2. Temporary permits only granted to:</td>
</tr>
<tr>
<td></td>
<td>- Mexican ship - owners with a foreign vessel under bare-boat charter, or</td>
</tr>
<tr>
<td></td>
<td>- Mexican ship - owner with a foreign vessel under some leasing agreement.</td>
</tr>
<tr>
<td></td>
<td>3. SCT cannot grant permits to foreign shipping companies.</td>
</tr>
<tr>
<td></td>
<td>4. Temporary permits apply for three months only.</td>
</tr>
<tr>
<td></td>
<td>5. No permit for the same vessel may be renewed more than seven times.</td>
</tr>
<tr>
<td></td>
<td>6. Mexican ship-owner holding a temporary permit for a foreign vessel must register it under the Mexican flag if it is going to stay in Mexican waters for more than two years.</td>
</tr>
<tr>
<td>NICARAGUA</td>
<td>1. If no Nicaraguan or Central American vessel is available.</td>
</tr>
<tr>
<td>NIGERIA</td>
<td>1. If Nigerian firms lack the required capacity.</td>
</tr>
<tr>
<td>PERU</td>
<td>1. If there are no Peruvian ships,</td>
</tr>
<tr>
<td></td>
<td>2. Foreign-registered ships operated by Peruvian crews or Peruvian shipping companies may be chartered.</td>
</tr>
<tr>
<td></td>
<td>3. Period not exceeding six months.</td>
</tr>
<tr>
<td></td>
<td>4. 25 per cent of the hydrocarbons transported are reserved for Peru's navy on domestic routes.</td>
</tr>
<tr>
<td></td>
<td>5. The Andean Community countries are given preferential treatment for cabotage services within the Andean Community region, as provided in Decisions of the Commission of the Cartagena Agreement.</td>
</tr>
<tr>
<td></td>
<td>6. Freedom of access for cargo originating in and intended for shipment by sea within the Andean region on vessels owned, chartered or operated by shipping companies of the member countries and of third countries.</td>
</tr>
<tr>
<td>PHILIPPINES</td>
<td>Special Permits temporarily allowing Philippine-registered ships engaged in international trade to conduct domestic trade.</td>
</tr>
<tr>
<td>MARINA</td>
<td>2. If no existing vessel is operating in the proposed route or area.</td>
</tr>
<tr>
<td>(Regulator)</td>
<td>3. If no suitable local vessel is available that meets the shipping requirements.</td>
</tr>
<tr>
<td></td>
<td>4. If the proposed vessel is contracted by private/public entities, and</td>
</tr>
<tr>
<td></td>
<td>5. If for tourist passenger vessels, the itinerary includes operating calls at domestic ports.</td>
</tr>
<tr>
<td></td>
<td>6. Cargo rates are not taken into account in determining the availability of suitable domestic services. Special permits are for up to three months and exemption permits are limited to one year.</td>
</tr>
<tr>
<td>THAILAND</td>
<td>1. Under certain conditions, e.g. when domestic shipping capacity is inadequate, foreign vessels may be allowed to provide domestic services.</td>
</tr>
<tr>
<td>Minister</td>
<td>2. Subject to ministerial approval on a case-by-case basis;</td>
</tr>
<tr>
<td></td>
<td>3. The number of foreign vessels authorized to provide domestic services dropped from 14 (September 2003) to 12 (May 2007).</td>
</tr>
</tbody>
</table>
Table 4  Summary Conditions of Waivers & Exemptions (select countries) – cont’d

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<thead>
<tr>
<th>URUGUAY</th>
<th>1. If Uruguayan vessels are not available.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Executive</td>
<td>1. Public Law 87-77 authorizes the transportation of passengers and merchandise in Canadian vessels between ports in Alaska and the rest of the United States.</td>
</tr>
<tr>
<td></td>
<td>2. Public Law 98-563 permits the transportation of passengers between Puerto Rico and other U.S. ports by foreign-flag carriers.</td>
</tr>
<tr>
<td></td>
<td>3. Freight shipments between the U.S. Virgin Islands and other U.S. ports may be carried by foreign-flag vessels.</td>
</tr>
<tr>
<td></td>
<td>4. Trade with Guam and other U.S. Pacific territories may be carried by foreign-built U.S.-flag ships that meet the ownership and crewing requirements.</td>
</tr>
<tr>
<td></td>
<td>5. The Secretary of Transportation is authorized to waive the U.S. build requirements for foreign built or rebuilt small passenger vessels authorized to carry no more than 12 passengers in a specified area, provided this does not adversely affect U.S. vessel builders or the coastwise trade business of any person who employs vessels built in the United States.</td>
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</tr>
<tr>
<td></td>
<td>6. Waivers for self-propelled tank vessels not built in the United States, provided the person requesting the waiver is a party to a binding legal contract, executed within 24 months after the date of enactment of the Act, with a U.S. shipyard for the construction in the United States of a self-propelled tank vessel. Vessels benefiting from the waiver must be U.S.-owned. The waiver may not be granted to more than three vessels.</td>
</tr>
</tbody>
</table>

Source: WTO Individual Country Reports 2001 - 8
7 Strength of organised institutional and political support

There are wide differences in the composition and strength of organised, institutional support for national cabotage regimes.

The greatest breadth of support is found in those nations where integrated and closed cabotage systems prevail. In the USA, for example, strong industry support prevails spanning shipping operations (the so called Jones Act Fleet); specialist ship builders; repair facilities and related services; maritime unions; and, federal and state maritime administrators and regulators. The support extends well beyond these industry stakeholders and includes pro defence groups and those involved in defence supply, procurement and reserve capability— reflecting the cross cutting policy goals of defence preparedness and maritime security. The broad policy goals of the Jones Act and associated pieces of legislation address more cross cutting public goals than just national defence. Sustainability of maritime commerce and the Merchant Marine are also explicit goals of both the Jones Act and related legislation setting out operations of maritime cabotage in the USA. These goals address support not just for shipping, ship building and repair but also a broad sweep of maritime support industries and the development of the vast array of skill sets underpinning maritime industry. The stakeholder support base for the Jones Act is therefore very broad extending to maritime communities, learning institutions and regulators, marine environment and safety organisations and so on. Political support crosses party lines and a line of recent Republican and Democrat Presidents, including Barak Obama, have put their total support for the Jones Act on the Public Record.

USA is unique in that there is a formally constituted industry coalition whose objective is to promote the Jones Act and other US maritime cabotage laws that underpin a successful unsubsidized domestic fleet built on US ownership, construction and crews. This coalition, the **Marine Cabotage Task Force** was initially formed in 1995 in response to the very organised and active lobby of the Jones Act Reform Coalition (JARC) in the 1990s. The Task Force boasts over 400 members representing vessel owners and operators, seafarer and docker labor unions, shipbuilding and ship repair yards, marine equipment manufacturers and vendors, trade associations, dredging and marine construction contractors, pro-defense groups as well as companies in other modes of domestic transportation. The executive of the MCTF includes representatives of various regional shipping companies and waterways operators; Industry associations and institutes; AFL-CIO; Dredging Contractors; Shipbuilders Council of America; as well as several large domestic shipping companies.
At the time of the formation of the MCTF, the JARC was mounting a well financed campaign aimed at watering down USA’s maritime laws. In response to the JARC campaign, the MCTF set about prosecuting an “extensive campaign to educate the Congress, the media, and the public of the importance of the cabotage laws to national and economic security”. During the campaign, the MCTF was instrumental in ensuring that successive attempts to enact anti-cabotage legislation failed. MCTF lobbying was so successful that in 1998 a majority of the House of Representatives signed off on a bipartisan, pro-Jones Act resolution (H. Con. Res 65) soon after the JARC disbanded.

Since then, the MCTF has continued to engage in a professional education campaign to ensure that Congress, State and federal administrators, the Department of Defence, the media and the public at large is well appraised of the intent and operation of the Jones Act. The MCTF has been successful in:

- Tightening lease financing regulations to ensure that foreign finance firms do not directly operate vessels in the coastal trade successfully lobbied to have a loophole closed in new lease financing regulations that appeared to allow foreign investors to participate as operators in US cabotage trade. The loophole was shown up by the activities of an Australian shipping services firm, Adelaide Steamships, in 1996. The MCTF clarified that overseas investors could finance but not operate coastal shipping and the signing of the Coast Guard Authorization Act (2004) effectively closed the loophole.
- Achieving a system where any temporary waivers will be considered only after the U.S. Maritime Administration determines that there are no US flagged vessels available. MCTF was forced to take action when the Bush Administration waived the law to allow movement of energy cargoes in the aftermath of Hurricanes Katrina and Rita. The MCTF undertook an extensive education program amongst Federal agencies, establishing that sufficient US flagged ships had been available to ship energy cargoes at the time. Largely as a consequence of these actions, no waivers were issued when energy production was again disrupted by storms in 2008.

The box below is extracted from the MCTF website and summarises the main activities and successes of the Task Force between 1995 and the present day.
US Maritime Cabotage Task Force Track Record

(an edited extract from MCTF web site)

Campaigning for the Industry
- Played a key role in securing the 2000 Bush/Cheney campaign statement in support of the Jones Act. The Bush/Cheney campaign reiterated its support in 2004.

Working with the Executive Branch
- Educated the Department of Defense (DOD) on the national security role played by the domestic fleet for vessels, manpower, and infrastructure through its reports. Gained public support from DOD for cabotage laws.
- Worked to block a request from the Government of Panama to alter a broad range of U.S. cabotage requirements through a free trade agreement.
- Cooperated with the U.S. Maritime Administration to change the way it counts the U.S.-flag fleet, eliminating opponents' ability to distort the number of self-propelled vessels as evidence of the failure of the Jones Act.
- Neutralized anti-Jones Act findings of the U.S. International Trade Commission's bi-annual reports on restraints on imported services.
- Encouraged the U.S. Coast Guard to undertake a rulemaking on the issue of vessel lease financing as a major step toward closing this loophole in the ownership provision of the cabotage laws.

Demonstrating Organizational Strength
- Established MCTF as a force to be reckoned with on issues of domestic marine transportation.
- Developed the most comprehensive resource base on the Jones Act and cabotage through both an internal resource library and a web site.
- Created a positive environment for the future of the Jones Act, thereby fostering the climate necessary to encourage billions of dollars in new vessel construction for operation in the Jones Act trades.
- Served as an active voice in support of the U.S.-flag domestic fleet and cabotage on the Hill and in public forums across the country through numerous appearances before congressional committees and through an active, nationwide speakers bureau.
- Provided a single voice of the industry on Capitol Hill and in federal intergovernmental battles.
- In concert with the U.S. Maritime Coalition, stymied efforts by Australian shipbuilders to repeal the U.S. build requirement, with the result they entered into joint ventures with U.S. shipyards.

Legislative Victories
- Prevented enactment of any anti-cabotage bills introduced since 1995.
- Coordinated and led effort to obtain majority support for H.Con.Res 65
- Identified and successfully opposed a provision in the 1996 Coast Guard Authorization Act that would have eliminated the U.S. build requirement for lease financed vessels.
- Blocked an effort to recast the national maritime policy in federal law as one encouraging U.S. owned and operated vessels only "insofar as practical", thus all but abandoning the principles of the Jones Act.
- Beat back the kaolin clay industry when it aggressively sought a Jones Act waiver.
- Blocked an all-out effort by North Carolina hog farmers and others to waive the Jones Act for the transport of feed grain products.
- Defeated Senate legislation repealing the Passenger Vessel Services Act, prevented legislation designating Panama as a "distant foreign port," and worked to establish an acceptable system of administrative waivers for small passenger vessels.
- Convinced the Administration that a waiver of the Jones Act sought by agriculture interests following Hurricanes Katrina and Rita was unnecessary.

Managing Public Perception
- Reversed the anti-Jones Act focus of the trade press that existed in 1995. Maritime and transportation media generally now accept the Jones Act and related cabotage laws as core elements of U.S. maritime policy.
- Created a positive image of the U.S.-flag domestic fleet as a growing, highly productive means of transportation through reports and associated media activity.
Other countries

The other case studies demonstrate evidence of strong industry groups and unions working closely with legislators and political parties to achieve outcomes favourable to their members – but there are no other cases such as the MCTF where such a broad coalition including ship owners and operators, waterway operators, trade unions, and cross section of industry organisations co-operate so closely in achieving common goals whatever their other difference may be.

In the other case studies, union representatives stressed the strategic importance of maintaining strong lobbying presence in national legislatures, in some cases backed up by traditional forms of solidarity in action at the workplace. Interviewees stressed the need to continually keep elected representatives aware of the issues and the role of national legislation and regulations in supporting domestic maritime capacity. The heavy workload of the MCTF, who so vigilantly ensure that politicians, media and administrators remain up to date and aware of the role of maritime cabotage laws, is a testament to this shared observation.

Brazil is a special case. Unlike the US situation, where the accent is on protecting national ownership of the cabotage fleet, the Brazilian policy framework has actively encouraged the engagement of large global shipping, terminal and logistic operators in the cabotage trade. This had bought new, international and sophisticated players into Brazilian politics. The strategy there is two fold. Firstly to defend and support the role of cabotage laws and ensure that purchasing and crewing policies of Petrobras continue to support national crews and ship construction. Secondly to defend broader employment conditions in the wider arena of national employment law as operators seek both new and traditional means of reducing costs – this involves continual vigilance and preparedness to act in support of their policies and jobs. The seafaring union describes the national legislature as an important arena for their activities, as so many times in the recent past major law changes here have bought about substantial changes to dockers, ship yard workers and seafarers conditions of employment and remuneration.

In the Brazilian case, we can say that there is a highly contested set of industry outcomes and policy frameworks. At the core of this cabotage is supported by most parties, however the policy framework around shipping, ports and employment law remains highly contested within the state arena.

In Canada, Unions have been excluded from the National Marine Industrial Council, an industry-government task force that meets regularly to discuss maritime policy. The group is influential and includes government ministers, senior public servants and representatives of industry. The NMIAC has published a report entitled “A Blueprint for a Stronger Future”, laying out the industry view of a
way forward for shipping in Canada. Unions are highly critical of many sections of this document and of the membership of the NMIAC which excludes important stakeholders, amongst them the elected representatives of maritime workers and communities. The ITF has co-ordinated a union response to this proposal entitled: Opportunities Challenges and Managing Trade.
Part B  

Trends in Cabotage Policy

The past thirty years has seen many changes to Cabotage regimes. Despite these changes Cabotage has prevailed in major maritime economies. There have been four key drivers of these changes:

- Regional Economic Integration
- Technological & Organisational Change with Containerisation
- “Push” for deregulation at national level and in multilateral organisations
- 21st Century policy backlash against cabotage relaxation

8  

Regional Economic Integration

Over the last three decades, regional economic integration has led to agreements among countries in a geographic region or economic community which aim to reduce barriers to the free flow of goods and services. None of these have led to the removal of cabotage laws from national statutes. However, the relaxation of Cabotage restrictions between member states have been a focus for the EU and the harmonization liberalisation of ocean cargo regulations has been a feature of Andean Communities (CAN) resolutions.

European Economic Union

Since 1 January 1993, the ships of EU Member States’ first registers have access to all European maritime cabotage markets as a consequence of Council regulation 3577/92. This regulation granted the freedom to provide maritime cabotage services “within a Member State for Community ship owners operating ships registered in a Member State and flying the flag of that Member State”.

Prior to 1993, northern Member States such as Norway and the UK had fully liberalised cabotage. However, Southern European members operated strict regimes where cabotage trade was open only to ships flying the national flag. In these areas cabotage was phased in over a number of years. The last systems of national cabotage involved island operations in France, Italy, Greece, Portugal and Spain. National cabotage in these instances operated till 1999. In the case of the Greek Islands there were exemptions till 2004 for lighter and island passenger servers.

These developments do not mean that there is no longer any cabotage regime operating in Europe. To qualify for cabotage trade within the European states, first register vessels must comply with conditions required for carrying out cabotage within the state. These can include crewing nationality, vessel ownership and fiscal requirements. Furthermore, this system of regional
cabotage can still prevent ships other than qualifying European flagged vessels from accessing cabotage trade within member states that retain restrictions on foreign entry. In these cases waiver systems can operate granting access only where European flagged vessels are not available. Member states are free to apply various forms of subsidy and fiscal support for indigenous shippers engaging in cabotage trade or tax relief to crews in cabotage trades.

Other forms of EU Support for shipping: Fiscal aid
European countries provide substantial and wide ranging support for shipping industry. Many major shipping countries have introduced tonnage tax as an alternative to income tax. Other measures operating in various EU states include:

- Rollover relief - Taxes on income from the sale of old vessels are deferred for six years if new replacement vessels are of EU origins
- Ship modernisation subsidies
- Reductions in social security premiums for seafarers
- Exemptions of seafarers from income tax
- Subsidization of relief crew members air fares
- Financial support for maritime training
- Wage subsidization for non foreign crew members

In 1997, EU executed guidelines on state support for maritime industry. These guidelines enabled the expansion of financial aid and tonnage tax to all merchant fleets operated by shipping companies incorporated in EU with connections to a member country registry. These included; reduced social security premiums and income tax of EU seafarers employed by member country flagship to a maximum of zero; Repatriation aid for EU seafarers on board member country flag ships; support for trainees employed as assistant crewmembers on board member country flag ships.

In 2003, EU adopted Community guideline for state aid which introduced the “Flag Link” principle to the shipping tax system. Under Flag link, shipping companies must operate EU flagships to be eligible for tonnage tax. To be eligible EU flagships must account for more than 60% of each company's total running tonnage. Tax Exemption for Seafarers, was extended to all seafarers regardless of nationality, except in the case of passenger liners sailing within EU waters. Another important shipping industry support is the availability of accelerated depreciation. It is not uncommon for European regimes to provide maximum depreciation of 75% and above of vessel value in the first 5 years of a vessel's operation.

All these measures are designed to improve cost competitiveness of EU flagships in international shipping and support more generally the maritime industry base. They have the effect of bringing the costs of coastal cabotage within Europe and international shipping more in line. However,
shipping standards set by EU legislation and governing International Conventions combine with these measures to effectively establish a barrier to entry and a strong form of regionalised cabotage. The distinguishing feature of this regionalized “cabotage” is that the cost differentials between cabotage and overseas trades are lesser in the European situation than in most systems of national cabotage. This is bought about by very thoroughgoing fiscal based systems of state aid for shipping and the right of entry of first register ships to domestic cabotage markets.

_Emerging European Issues affecting coastal shipping_

The EU is committed to expanding Short Sea shipping and achieving higher proportion of cargo volumes transported by sea as part of broader strategy to reduce the environmental impacts of transportation.

**Andean Community**

Between 1991 and 2002 The Andean Community members (Bolivia, Colombia, Ecuador, and Peru) signed off on a number of decisions that liberalized shipping arrangements between member states and with respect to cargo reservations with international trade with non member states. These decisions included:

- The elimination of reserved cargo at the Andean level. (Decision 288 - 1990).
- Policies for the development of the merchant marine and harmonization of ocean transport policies (Decision 314 - 1992)
- Decision on Maritime Guarantees and the Preventive Embargo of Ships aimed at provided legislative framework for achieving investment guarantees in water transport. The agreement produced harmonized legislation on maritime guarantees (naval mortgages and maritime privileges) and the preventive embargo of ships (Decision 487 - 2000).

**The operation of cabotage within member states has not been affected by any of these decisions.** Some member states give preference to CAN flagged vessels when issuing permits to foreign ships due to non availability of national flagged ships to perform cabotage.
### Table 5 Tonnage Tax in Select European Countries


<table>
<thead>
<tr>
<th>Country</th>
<th>Holland</th>
<th>Germany</th>
<th>U.K</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Background</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commenced</td>
<td>January 1 1996</td>
<td>January 1 1999</td>
<td>January 1 2000</td>
</tr>
<tr>
<td></td>
<td>• The policy is expected to halt the trend of flagging out to FOC, to keep a country attractive for the shipping business, and to have the shipping industry contribute more to the Dutch economy.</td>
<td>• Preventing an outflow of shipping companies to neighboring Holland (Avoiding becoming at a disadvantage over Holland)</td>
<td>• Decrease in the number of direct ownership vessels (The decrease was about 4% per year, and in 1998 the number plunged to about 9.7 million dwl, less than one-fifth its peak in 1997.)</td>
</tr>
<tr>
<td></td>
<td>• Implications on acquiring foreign currency and increasing the number of seafarers are minor</td>
<td>• Another implication is the making up of increased cost that resulted from safety regulations being imposed on German flag ships</td>
<td>• Decreases in the number of seafarers (In 1980-1997, the number of officers decreased 78% and that of ratings by 65 %.)</td>
</tr>
</tbody>
</table>

| **Applicable Range** | | | |
| Coefficient according to tax rate - Norway | Coefficient according to tonnage - Holland and others | Coefficient per 100 N/T | Coefficient per 100 N/T | Coefficient per 100 N/T |
| | | Up to 1,000 N/T | Up to 1,000 N/T | Up to 1,000 N/T |
| | | Eur 9.02 | Eur 9.02 | Eur 9.02 |
| | | Over 1,000 N/T and < 10,000 N/T | Over 1,000 N/T and < 10,000 N/T | Over 1,000 N/T and < 10,000 N/T |
| | | Eur 6.81 | Eur 0.92 | Eur 0.92 |
| | | Over 10,000 N/T and < 25,000 N/T | Over 10,000 N/T and < 25,000 N/T | Over 10,000 N/T and < 25,000 N/T |
| | | Eur 4.54 | Eur 0.69 | Eur 0.69 |
| | | Over 25,000 N/T | Over 25,000 N/T | Over 25,000 N/T |
| | | Eur 2.27 | Eur 0.23 | Eur 0.23 |
| | | Over 25,000 N/T | Over 25,000 N/T | Over 25,000 N/T |
| | | Eur 1.15 | | |

| **Selection of tonnage taxation** | | | |
| | Noncompulsory; chosen by the taxpayer | Noncompulsory; chosen by the taxpayer | Noncompulsory; chosen by the taxpayer (a group under a consolidated tax payment system) |
| | Choice cannot be changed for 10 years (10 years is one unit.) | Choice cannot be changed for 10 years (10 years is one unit.) | Choice cannot be change for 10 years (10 years is one unit.) |
| | Not retroactively applied. However, as a special exception, it will be applied retroactively if applied for within two years of introduction (before 1998). | Not retroactively applied. However, as a special exception, it will be applied retroactively if applied for within three years of introduction (before 2001). | Since January 1, 2000, applicable from the fiscal year in which tonnage tax was chosen |
| | | | Since January 1, 2000, applicable from the fiscal year in which tonnage tax was chosen |

| **Effects** | | | |
| | More than 100 shipping companies moved their business footholds back to Holland because of the tonnage tax. | According to the German Ship owners’ Association, German ship owners have chosen tonnage tax for 500 out of 1,600 oceangoing vessels. There is also an increase in foreign investments. | After introducing tonnage tax, 47 companies, or 600 vessels, are under tonnage tax, and an additional 20 companies are now in negotiations with tax authorities. |
| | More than 90% of the shipping companies are expected to choose tonnage tax in 2006. | | | In the past two years, there was a 50% increase in U.K. flag ships. |

| **Conditions** | | | |
| | Applies to companies incorporated in Holland, controlled mainly from Holland, or managed through a branch, etc., located in Holland. | Shipping companies must be doing business and corporate management in Germany. Foreign ship owners must register their vessels in Germany and manage them from Germany. | Shipping companies that choose tonnage tax must provide training to seafarers. They are obligated to train one crewmember for each 15 officers employed or to provide funds every year |

| **Advantages** | | | |
| | Easier fund management because of fixed tax income because taxable income is calculated from assumed profit, tax is levied even in cases of loss. | | |

| **Reasons for returning back to flagship** | | | |
| | Because all chartered vessels as well as excessive tonnage fall out of application if net tonnage of time charter exceeds three times the total net tonnage of owned/co-owned ships and bareboat charter vessels, the shipping company must increase the number of owned ships in order to apply tonnage tax to all vessels. | As applicable vessels are limited to owned/co-owned ships of German registry, shipping companies have to increase the number of ships in these categories so that more vessels will be affected by tonnage tax. | Because the net tonnage of time chartered vessels is restricted to within 75% of the total tonnage of owned ships and chartered vessels, shipping companies have to increase the number of owned ships to apply |
| Table 5  Tonnage Tax in select European Countries  (continued)  
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Country</strong></td>
</tr>
<tr>
<td><strong>Commencement</strong></td>
</tr>
</tbody>
</table>
| **Background** | - The aim is to promote Norway’s shipping industry and maintain employment levels. It is a national policy with a view to acquire foreign currency. 
- In Norway, where 20% of its people are involved in the marine industry, there is no opposition from other industries to push for government policies favorable to the shipping industry. | - To achieve equal footing with major neighboring shipping countries 
- To enable more flexible investments 
Applications to cargo/passenger transport and related businesses | - Main targets are to prevent a decrease in the number of flag ships, to strengthen international competitiveness, and to promote the industry together with its surrounding industries. 
- Countries approved for introduction by the European Committee. 
- Spain (February 2002), Belgium March 2003) and France (May 2003) |
| **Applicable Range** | - International shipping income (mostly cross-trades) 
- Regardless of port or place of registry (the system is not limited to NOR/S ships.) 
- Application is limited to maritime income. 
- Interest income or capital gains from the sale of vessels are excluded. 
- Dividends, if any, are taxable according to corporate tax rates. 
- Tax relief for environment-friendly vessels (a 25% cut in tonnage tax for specific vessels) | - Applies to vessels 20 G/T and over 
- Tonnage of time charter vessels should not exceed four times the sum of tonnage of owned ships and bareboat charter vessels. | - Despite slight differences, all governments are trying to motivate ship owners to increase the number of ships owned by setting volume restrictions on time charter vessels. |
| **Coefficient according to tax rate - Norway according to tonnage - Holland and others(2003)** | | | |
| | Tax Rate per 1,000 N/T | Coefficient per 100 N/T | Dutch Method: Obtain assumed profit per vessel (Coefficient×365 days×N/T), add income from vessels excluded from tonnage tax, and then multiply it with the corporate tax rate. 
- Norwegian Method: Calculate by using the fixed tax rate according to net tonnage. (It has nothing to do with the ordinary corporate tax rate.) |
| | Up to 1,000 N/T: no tax | Up to 1,000 N/T:DKK 7 | |
| | Over 1,000 N/T and < 10,000 N/T Nkr 50 | Over 1,000 N/T < 10,000 N/T:DKK 5 | |
| | Over 10,000 N/T < 25,000 N/T Nkr 33 | Over 10,000 N/T <25,000 N/T: DKK 3 | |
| | Over 25,000 N/T Nkr 16 | Over 25,000 N/T DKK 2 | |
| | Revised 2002. | | |
| **Selection of tonnage taxation** | - Application non compulsory; chosen by the taxpayer 
- To be applied from Jan. 1 of the year following the year application was accepted 
- Application may be cancelled at any time. (Application becomes void from Jan. 1 of the year of cancellation.) | - Application noncompulsory; chosen by the taxpayer 
- Regardless if tonnage tax or ordinary corporate tax was chosen, changing to the other method is not allowed for 10 years. 
- Choice basically made according to company group | - Application is noncompulsory. The taxpayer chooses between ordinary corporate tax and tonnage tax. 
- In Holland and in other countries, changing taxation methods for a certain time is not allowed. In Norway, changes are allowed once a decision is made. |
| **Effects** | - In 1996, 331 shipping companies benefited from the system. 
- In 2001, 714 shipping companies benefited from the system. Ships under Norwegian Control 1996: 1,393 vessels (47.0 million dwt) 
1998: 1,622 vessels (52.5 million dwt) 
2001: 1,049 vessels | - Evaluation of the system is too early because of the limited time it was in operation. | - The number of owned ships, flagship registries, employees, and vessels built increased in Holland and Norway. 
- In other countries, it is too early to evaluate because of the limited time it was in operation. |
| **Conditions** | - Shipping companies applying for tonnage tax are not allowed to engage in businesses other than ship operation and ship rental. They must satisfy several other conditions, such as limiting possessed assets | - Applicable to Danish companies, EU companies with permanent facilities in Denmark, or companies managed or paying taxes in Denmark. | - In the U.K., shipping companies that choose tonnage tax must provide training for seafarers |
| **Advantages/Disadvantages** | - Easier fund management because of fixed tax income 
- Because taxable income is calculated from assumed profit, tax is levied even in cases of loss. | - Because time charter vessel tonnage is restricted to 80% or less of the sum of tonnage of owned ships and charter vessels, ship owners have to increase owned ships to apply tonnage tax to all vessels. | - Countries using the Dutch Method (a system requiring an increase in owned ships to apply tonnage tax to all vessels): Holland, U.K., Denmark 
- Countries using the German Method application limited to owned/co-owned flag ships): Germany |
| **Reasons for returning back to flagship** | There are advantages to applying this with a system that gives employers an income tax refund equal to 12% of the wages paid to seafarers. | | |
Table 6: Policies in Major European Shipping Countries to Strengthen the Industry

<table>
<thead>
<tr>
<th>Country</th>
<th>Policy Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United Kingdom</strong></td>
<td>Abolish all restrictions on the nationality of crew members (excluding those for captains of strategically important U.K.-flag ships deployed during times of emergency) to U.K., Commonwealth, EU, or NATO-country nationals.</td>
</tr>
<tr>
<td></td>
<td>• The above also applies to Commonwealth-flag ships of Mann Island Registry</td>
</tr>
<tr>
<td></td>
<td>○ Roll-over relief system</td>
</tr>
<tr>
<td></td>
<td>• Taxes on income from the sale of old vessels deferred for six years if new replacement vessels are of U.K., Commonwealth, or EU registry.</td>
</tr>
<tr>
<td></td>
<td>• No regulation on term of registry</td>
</tr>
<tr>
<td></td>
<td>○ Reduction in social security premiums</td>
</tr>
<tr>
<td></td>
<td>• Medical insurance fee reduced 0.5% for U.K.-registered oceangoing shipping companies</td>
</tr>
<tr>
<td></td>
<td>○ Exemption of seafarers’ income tax</td>
</tr>
<tr>
<td></td>
<td>• Exemption/refund of income tax to seafarers staying outside the U.K. for 183 days or more a year.</td>
</tr>
<tr>
<td></td>
<td>○ Crewmember relief cost scheme - CRCS - since 1988</td>
</tr>
<tr>
<td></td>
<td>• Subsidize 20% of normal economy class airfare.</td>
</tr>
<tr>
<td></td>
<td>○ Support for maritime training - SMarT- since 1998</td>
</tr>
<tr>
<td></td>
<td>• SMarT1: Training for first Seaman’s Competency Certificate; maximum £12,000 per person</td>
</tr>
<tr>
<td></td>
<td>• SMarT2: Onshore training for second (upper) level Seaman’s Competency Certificate; maximum £6,000 per person</td>
</tr>
<tr>
<td></td>
<td>• SMarT3: Onshore training to upgrade ratings’ skills</td>
</tr>
<tr>
<td></td>
<td>• SMarT4: Onshore training for officers in line with the Amended STCW Convention</td>
</tr>
<tr>
<td></td>
<td>○ Tonnage tax</td>
</tr>
<tr>
<td></td>
<td>• Similar to Holland’s system</td>
</tr>
<tr>
<td></td>
<td>• Shipping companies that choose tonnage tax must either provide training at a rate of one trainee per 15 officers or bear financial responsibility.</td>
</tr>
<tr>
<td><strong>Norway</strong></td>
<td>Allows the employment of non-Norwegian seafarers, except captains, at a pay scale equal to that in their home country - although the rule is flexible enough to include captains</td>
</tr>
<tr>
<td></td>
<td>• Exemption of income tax for non-Norwegian crewmembers on board NIS vessels</td>
</tr>
<tr>
<td></td>
<td>○ Reduction in crewmembers’ income taxes</td>
</tr>
<tr>
<td></td>
<td>• Up to Nkr 70,000 is deducted from the total income of Norwegian crew members</td>
</tr>
<tr>
<td></td>
<td>• Ship owners are given an income tax refund equal to 12% of the total wages paid to Norwegian crewmembers.</td>
</tr>
<tr>
<td></td>
<td>○ Net Wage System</td>
</tr>
<tr>
<td></td>
<td>• A system in which social security is deducted from the crew’s wages and given to the ship owner</td>
</tr>
<tr>
<td></td>
<td>○ Subsidy to employ Norwegian crew members</td>
</tr>
<tr>
<td></td>
<td>The equivalent of 12% of crewmembers’ wages are given to ship owners to make up the difference between their wages and those of foreign crewmembers when Norwegian registry vessels or NIS ships have a certain percentage of Norwegian crewmembers.</td>
</tr>
<tr>
<td></td>
<td>○ Tonnage tax - since June 1996</td>
</tr>
<tr>
<td></td>
<td>• Income tax exemption for vessels under 1,000 N/T</td>
</tr>
<tr>
<td></td>
<td>• Differs from systems in other nations</td>
</tr>
</tbody>
</table>
**Table 6: Policies in Major European Shipping Countries to Strengthen the Industry**  

<table>
<thead>
<tr>
<th>Country</th>
<th>Policy Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Germany</strong></td>
<td></td>
</tr>
<tr>
<td>○ German International Ship Registry System - ISR/GIS since May 1989</td>
<td>• Allows the employment of a given number of foreign crewmembers who are below the rank of third officer and ratings at a pay scale equal to that in their home country.</td>
</tr>
</tbody>
</table>
| ○ Roll-over relief system | • Fifty percent tax on income from the sale of vessel(s) deferred.  
• Income from the sale of vessel(s) owned for more than six years may be deducted from the value of acquired assets or of the vessel(s) sold if replaced by new ones within four years. |
| ○ Relief in nationality restrictions for crewmembers | • Amended to "captain (German) and 1 to 4 German or EU-national crewmember(s)." |
| ○ Income tax relief for seafarers- since Jan. 1999 | • A 40% cut in the income tax of seafarers who are at sea for 183 days or more a year, and reserves by ship owners allowed |
| ○ Tonnage tax since Jan. 1999 | • Similar to Holland’s system |
| **France** | |  
| ○ Cut in crew costs by Kerguelen Islands Registry | • Only 35% of the crew must be French (4 of which are to be officers). |
| ○ Reduction in social security premiums | • A 50% reduction in social security premiums borne by ship owners |
| ○ Professional tax refund | • Refund shipping business proportion of professional |
| ○ Oceangoing shipping modernization subsidy | |  
| **Denmark** | |  
| ○ Danish international ship registry system | • Allows the employment of non-Danish crew members other than captains at a pay scale equal to that in their home country |
| ○ Income tax exemption for seafarers | • Income tax exemption for crew members on board DIS vessels |
| ○ Seafarers repatriation aid | • A fifty percent subsidy of the repatriation fee for seafarers on board for more than six months |
| ○ Tonnage tax | • Choice between ordinary corporate tax, based on profit, or tonnage tax, based on net operating tonnage (If choosing tonnage tax, it is not allowed to change for 10 years.) |
| **Holland** | |  
| ○ Tonnage tax | • Choice between ordinary corporate tax, based on profit, or tonnage tax, based on net operating tonnage |
| ○ Measures to promote the employment of seafarers | • Ship owners are given an income tax and social security premium refund equal to 40% of seafarers’ wages  
• Ten percent may be deducted for crew members on board Dutch flagships but who do not reside in Holland. |
<p>| ○ Relief in nationality restrictions for crewmembers | • Non-Dutch captains of EU or EEA nationality passing certain tests are allowed on board for a maximum of two years (since Aug. 1998). |</p>
<table>
<thead>
<tr>
<th>Country/Community</th>
<th>Policy Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>○ Guidelines on state aids to the maritime transport- Executed 1997</td>
</tr>
<tr>
<td></td>
<td>• Financial aid and tonnage tax were expanded to all merchant fleets operated by shipping companies incorporated in EU member countries so long as connections to a member country registry can be proved. (Limiting such aid to member flag ships is not allowed.)</td>
</tr>
<tr>
<td></td>
<td>• A reduction in the social security premiums and income tax of EU seafarers employed by member country flagships to a maximum of zero is enabled.</td>
</tr>
<tr>
<td></td>
<td>• Repatriation aid for EU seafarers on board member country flagships is possible.</td>
</tr>
<tr>
<td></td>
<td>• Aiding in training held on board member country flagships (where trainees act as assistant crewmembers) is enabled.</td>
</tr>
<tr>
<td></td>
<td>○ Community guidelines on State aid to maritime transport (adopted 2003)</td>
</tr>
<tr>
<td></td>
<td>• The Guideline introduced a new principal called “Flag Link” to the shipping industry’s tax system. It requires shipping companies to operate EU flagships to be eligible for the tonnage tax scheme, and upon the enforcement of the new Guideline, EU flagships must account for more than 60% of each company’s total running tonnage. (Formerly, the only requirement was the ratio of national flagships. The ratio was owned ships (including second ship registry and bareboat charter) : time charter = between 1:3 and 1:4.)</td>
</tr>
<tr>
<td></td>
<td>• If a company’s figure is less than 60%, it may not apply for government aid. However, companies with an EU flagship running tonnage below 60% but satisfying the current requirement may be given a break on condition that they maintain their current EU flagship tonnage.</td>
</tr>
<tr>
<td></td>
<td>• Countries that introduced a tonnage tax are required to submit reports.</td>
</tr>
<tr>
<td></td>
<td>• Tax Exemption for Seafarers, etc., which has been restricted to EU seafarers, will basically be applicable to all seafarers regardless of nationality. However, seafarers on board passenger liners sailing within EU waters are restricted to EU seafarers only</td>
</tr>
</tbody>
</table>
Ports and Shipping industries have been rapidly evolving due to combination of big forces including:

- Containerization;
- Market deregulation;
- Digitalisation and computer modeling;
- Rise of integrated logistics; and
- the rapid growth of world scale supply chains

Shipping lines and terminal operators (sometimes the same entity) have sought to remain competitive through a process of greater scale and cost reduction. This in turn is leading to the development of global hub ports relying on feeder routes. There is no end in sight yet to the process of concentration of control of world tonnage in the hands of major GNTs and the scaling up of ships and port terminal capacity. In the age of Post Panamax super carriers, hub and feeder ports become more critical.

However, there are limits to the efficacy of scale of ships and terminals alone in driving profitability. Increasingly, the merging of shipping terminal and logistics operations is giving rise to a new transport paradigm, sometimes called integrated logistics. The whole supply chain and its complex relationships provide profitability to the network operator. The imperative to unlock bottlenecks for container feeder trade has been one of the driving forces for liberalizing national cabotage laws and opening up international shipping to the cabotage routes. There has been pressure to do so in pendulum trade routes and in especially Asia which now accounts for roughly half of global container volumes. The decision by a country to liberalize or remove constraints on certain cabotage legs of the container trade has been justified as necessary to strengthen the competitive standing of a hub port vis a viz others in the region.

In both Canada and India, lobbyists and analysts have argued for relaxation of cabotage laws governing transshipment and movement of empty boxes by citing the US where the Jones Act allows container transshipment through a US hub port.

The logistic requirements of the container trade have been cited as the underlying cause of cabotage liberalisation in a number of countries over the past decade and a half. In many cases the changes have involved temporary permits for transshipment and import feeder journeys. These are reviewed briefly below.
Chinese Taipei

In 2002 Chinese Taipei reported to APEC that to “address the imbalance in container movement between the three main ports and to alleviate road congestion” they were now issuing temporary permits to foreign shipping companies for container transhipment, where no domestic capacity is available.

Malaysia

Malaysia has relaxed its cabotage regime on a number of occasions since 1994 when it introduced the Merchant Shipping (Extensions and Amendments) Act. In 1994 foreign flagged vessels were permitted to transship boxes between Penang and Port Klang. In 1997 permission was granted for transshipment between Penang, Johor and Port Klang. The rationale for these exemptions was primarily to strengthen Port Klang’s status as a hub Port competing with Singapore. Subsequently, the exemptions have been further extended under the 2001-5 National Development Plan to assist the development of Tanjung Pelepas as a Hub Port and one of the worlds top 25 Hub Ports for east west container traffic.

China

In 2003, China relaxed cabotage to allow foreign carriers move containers between mainland domestic ports in a bid to ameliorate port congestion and accommodate growth of port infrastructure. Previously China had required foreign vessels to ship China bound empty boxes to Chinese ports via Hong Kong.

Korea

In 2003 Korea relaxed cabotage to allow foreign carriers to move containers between domestic ports.

India

On a number of occasions since 1992, the Indian Government has been forced to relax cabotage laws in order to ease congestion in major ports and allow container foreign flagged vessels to transship container cargoes or operate coastal feeder services. Between 1992 and 1997 foreign shipping companies were allowed to operate feeder services using container and lash ships. It was hoped that this relaxation of cabotage would lead to greater investment in the hub ports. When this failed to eventuate, the relaxation of cabotage was not extended beyond the five year period.
Again in 2005, the Government temporarily relaxed cabotage to enable feeder services and transshipment to and from JNPT/Mumbai Port and any other port in the country. Congestion at both Chennai and JNPT port, both candidates for hub port status, has attracted industry lobbying for cabotage relaxation for most of the past decade. Those in favor of the relaxation claim that existing infrastructure and shipping licensed under India’s cabotage regime are not up to the task of expanding feeder services along east and west coasts as Chennai and JNPT hubs develop. The issue has attracted strong debate with Indian National Shipowners Association (INSA), the Directorate General of Shipping and the National Shipping Board at times strongly opposing any relaxation of Cabotage.
10 Cabotage and the International Free Trade Movement
1980 - 2000

A somewhat loose anti-cabotage movement emerged in the last decades of the 20th Century attracting a wide support base of policy bureaucrats, exporters, shippers, trade organisations and transport economists. The movement has had comparatively few surviving successes thus far, but has energetically engaged in national policy debates and with multilateral forums. Multilateral Organisations such as OECD, World Bank, and IMF adopted policy stances which have strongly favoured maritime deregulation and the opening up of coastal trade.

The ideology of this broad coalition is closely aligned with neo-liberal policy frameworks. It is not surprising that attacks on cabotage have emerged where conservative governments closely aligned with primary industry exporters have been elected in countries relying on sea transport of bulky goods and commodity exports.

In South America, cabotage was revoked or seriously relaxed in Argentina and Chile. Throughout South America and parts of archipelagic South East Asia, cabotage shipping was indirectly maimed by broader deregulation processes in the shipping industry. In the case of Indonesia this involved opening up hundreds of small ports to international shipping, and easy terms for overseas involvement through joint ventures in local shipping. In South America, the effective dismantling of cargo reservation in international trades, the closure and/or privatisation of ship yards and shipping lines and the opening up of merchant trade to flags of convenience and overseas lines wreaked havoc on national fleets and maritime capacity even if cabotage regimes remained in place. Fortunately, there has been an almost inevitable policy reaction to the failed experiment in deregulation in South America during the past decade.

In New Zealand, a minor maritime nation, cabotage was effectively revoked in 1994. In Australia, a minimalist and open version of cabotage (see case studies) has been emasculated by the growing number of permits enabling unlicensed ships to compete on unequal terms with licensed ships. New Zealand remains the one and only total policy victory for the anti-cabotage forces throughout the world!

In these few places where cabotage has been successfully liberalised or removed, the policy debate has only been allowed to proceed on the basis of price competitiveness alone. Proponents for cabotage dismantling often presented simple arguments based on unfettered market forces providing the best mechanism for allocation of shipping resources. The broader policy arguments in
support of cabotage were generally overlooked. In the forums that mattered most, however, the cost of coastal shipping was never seen as a sufficient argument to overturn cabotage. Politically, this narrow focus has been the undoing of the anti-cabotage forces.

The multilateral forums and Free trade associations have always represented the best opportunity for these anti-cabotage forces. However, any chance of enforceable and widespread deregulation of coastal shipping has been ruled out, for the time being, because of the position adopted by the USA in the World Trade Organisation.

The World Trade Organisation (WTO) was established in 1995 to succeed the General Agreement on Tariffs and Trade (GATT). The WTO has established a wide ranging agenda for global trade liberalisation that takes in not just manufactured goods but a wide range of basic, often public, services. The WTO has close allies in other multilateral organisations including the OECD and the World Bank. Within the WTO there is highly focused drive, supported by global logistics groups on achieving trade liberalisation in transport services.

While Flags of convenience have produced an extreme form of market liberalisation, there are complex issues around cabotage and the link between national shipping flags, ship ownership and crewing arrangements and the application of national laws aboard flag flying ships. The US government has rejected any challenge to its domestic cabotage arrangements enshrined within the Jones Act. It sees these as fundamental to national security and defence preparedness. Maritime and homeland security are also now high priority issues trumping free trade since the events in New York on the 11 September 2000.

Cabotage was left out of the Uruguay round of the General Agreement on Trade in Services operating under the auspices of the WTO. There were some negotiations around maritime auxiliary services and use of port services. Since the Doha round, few commitments have been made on maritime transport services.

However, there is renewed lobbying within the WTO to establish a Logistics group dealing with a wide range of services such as cargo handling, warehousing, customs clearance, container depots, and inventory management. It can be anticipated that such a mechanism in the future will lead to the raising of cabotage relaxation in the guise of discussions around the linked issues of feeder port services and container transshipment. In 2003, the issue was placed on an APEC forum agenda.

**Pivotal position of the USA and the Marine Cabotage Task Force**

The discussion above highlights the pivotal position of the USA and the role of the Marine Cabotage Task Force in defending Cabotage in the USA. Should the US government have adopted a different
position in the WTO, NAFTA and other forums such as APEC, maritime cabotage regimes would have faced far more serious policy assaults throughout the world. This points to the significance of the defeat of the coalition of interests campaigning to dismantle the Jones Act in the middle nineties. The countering of these attacks by the US Maritime Cabotage Task Force, using a broad and well organised coalition representing shipping, seafaring, transport administration, and defence interests, not only successfully defended US cabotage but has also helped put international debates on much broader footings.

The formation of the MCTF and the grandfathering of the Jones Act coincided with the Uruguay Round. Since 1995 there has also been a policy backlash against the relaxing of cabotage and deregulation which occurred between 1980 and the late 1990s. This backlash is producing more strategic cabotage regimes integrated with national development goals in Latin America and South East Asia. Section 9.4 below provides a brief overview of these developments.
11 Bi Lateral Agreements and the EU

To date the WTO has not been effective as a vehicle for liberalisation of cabotage arrangements. In fact, national cabotage has not been included in the 1996 or 2000 rounds. Generally, WTO has found it hard to deliver progress on Maritime Transport Services. In mid 1996, member governments suspended market access negotiations for four years, as only 24 countries had made any conditional offers.

The position of the USA was instrumental in achieving this suspension. Talks resumed in 2000 around three broad areas:

- access to and use of port facilities (such as pilotage, towing and tug assistance, provisioning, garbage collection, port captain's services, and anchorage);
- auxiliary services (such as cargo-handling, storage and warehousing, stevedoring, freight forwarding, customs clearance services, container-station and depot services - including foreign operators' rights to establish their own facilities and supply these services); and,
- ocean transport (international passenger or freight transport).

The exclusion of cabotage from these negotiations, despite strong support for its inclusion from a number of institutional players, was due in part to the political sensitivity of this issue with strong opposition to liberalisation from both developed economies (such as the USA and Japan) and a broad range of developing economies (including a number of Latin American and South East Asian economies highly reliant on international, coastal and intra archipelago shipping for transport of goods).

Nevertheless, the strategic situation remains very dynamic – and supporters of cabotage need to be ever watchful of developments. In recent decades, the widespread use of Flags of Convenience and rapid shifts in port technologies (containerization being the most significant) have changed both political and economic environments in which the maritime industry operates. For example, the logistic paradigms and shipping business models that have emerged in this environment have tended to favour a loosening of public ownership and control of ports with greater deregulation, privatization, and decentralization of port management which is often reinforced by anti-monopoly laws.

To date, there have been no explicit proposals from any WTO member nation to include cabotage within the Maritime Transport Services schedule of the WTO. Proponents of liberalisation have correctly judged such a move to be tactically unwise, preferring gradual and tactical change. In this context the positioning of the European Community bears close consideration. The European Community has called for talks on the repositioning of equipment (such as empty containers) as
well as the allowance of feeder services for international cargo between hubs and local ports. These issues clearly impact directly on the implementation of national cabotage laws.

There is a clear economic rationale behind such proposals. The economics of containerization demands economies of scale and high capacity utilization rates to reduce unit costs. This has led to the development of super-sized container vessels designed only for berthing at “World Ports,” with a concomitant reduction in port costs. This model only works with efficiently organized feeder services to smaller ports which have logistics connections to decentralized warehousing, distribution and manufacturing centres, many of which are located long distances away and sometimes inland from the World Ports.

More efficient feeder services means reduced handling costs of containers, higher capacity utilization and less redundant waiting time for super-sized container ships. Consequently strong pressure is exerted by international carriers, and their political agents, to gain direct involvement in feeder services. Cases are reviewed elsewhere in this report where national maritime cabotage systems have been relaxed in favour of international carrier involvement in coastal feeder services. From the perspective of the large international carriers, direct involvement in feeder services enables easier and less transparent cost control measures because they can control the repositioning of their own empty containers within the logistics chain. Repositioning costs are a not insignificant component of containerized transportation.

The European Community has been a vocal representative of the interests of the larger carriers, vigorously pursuing on their behalf rights for repositioning of equipment (such as empty containers) and the allowance of feeder services for international cargo between hubs and local ports in WTO negotiations. The EC adopts a tactical position where it camouflages its intentions by placing emphasis on “equipment” and “international cargos” in its proposals. The EC is not alone in its views. Some member countries of APEC have also expressed the view that feeder services related to international cargo, repositioning of equipment, and movement of empty containers should be considered in the scope of negotiations on trade liberalisation.

The ineffectiveness of the WTO and multilateral arrangements in winding back systems of national maritime cabotage has forced proponents of cabotage liberalisation to focus their efforts on opportunities presented by new forms of shipping and logistics operations (eg short sea shipping); to do so they rely on case by case reform of national legislation, and on regional multilateral and bilateral agreements. The most likely sources of any future erosion of cabotage are regional trade compacts and the extension of bi-lateral arrangements – especially those involving globally significant regions and/or major sea trading nations.
Bilateral arrangements that reserve shares of national cargoes to ships carrying the flags of the parties to those agreements flourished in the first few post-Second World War decades. These were systems of cargo reservation. Some of these still remain in place. These usually involve agreements on government cargoes where some or all of the tonnage which is purchased or secured by national governments is reserved for national shipping lines.

Bilateral trade agreements have also been common when at least one of the partners to the agreement is a centrally planned economy. For example, the People’s Republic of China operates bilateral agreements with over 50 nations and with the European Community. Some of these agreements deal with sea cargo sharing. A bilateral agreement between China and the USA provides for parity in bilateral liner cargo, with the rights to carry at least one-third of such cargo being given to national tonnage.

Furthermore, the USA has bilateral agreements on shipping and cargo with Japan and a number of Latin American countries. The South American agreements stem from the period of growth of the South American Liner Conferences and the battles over rights to ship valuable export cargoes such as coffee between the two American continents. Japan is party to bilateral maritime agreements with more than 25 countries (including USA, PRC, and many EU member states) – however only six of these provide limited access to cabotage services on a reciprocal basis. In the South Americas, Brazil is engaged in bilateral agreements to protect sea trade with Argentina and Chile. These agreements (with some notable exceptions), reserve half of bilateral sea-borne trade.

Today there is considerable pressure from free trade proponents to dismember these bilateral agreements, which are seen as systems of trade protection and cargo reservation. The EU bans member states from engaging in such bilateral agreements. Consequently, the new generation of bilateral agreements, which are predominantly concerned with opening access to markets rather than allocating shares of tonnage, now represent the main threat to cabotage.

In South America, regional multilateral arrangements covering shipping services exist for MERCOSUR, ANDEAN and CARICOM communities – however unlike the EU these regional arrangements have left national cabotage systems largely intact so far.

Some potential does exist for bilateral arrangements that reserve cargo to be used to open or also reserve access to feeder services on the principle of reciprocity, and this may be occurring to a very limited extent in the Japanese case. However, the most likely route to diluting national cabotage systems is through bilateral and regional multilateral agreements focusing on achieving greater and more liberal access to markets.
**EU-China Maritime Transport Agreement**

The EU lobby has not been without success in using bilateral agreements to weaken national cabotage systems, by assisting international shippers gain control over movement of containers and feeder services. Most notable has been the EU-China Maritime Transport Agreement, signed off in 2002, which came into effect in early 2008. The agreement is significant, considering the fact that the EU and Chinese interests control close to 40% of the world shipping fleet. Also notable is the fact that, in line with the GAT, the agreement covers ships owned and operated by EU nationals irrespective of the country of registration, or how ships are flagged.

Article II of this bilateral maritime agreement states:

“this Agreement applies to...the movement of equipment such as empty containers, not being carried as cargo against payment, between ports of China or between ports of a Member State of the Community”, and that “if vessels of one Party sail from one port of the other Party to another or from one port of a Member State of the Community to another to load cargo for foreign countries or discharge cargo from abroad, it shall be regarded as a part of the international maritime transport, (which is covered by the Agreement.)”

The Agreement is for an initial period of five years and is based on the principles of freedom to provide maritime transport services, free access to cargoes and cross trades, unrestricted access to and non-discriminatory treatment in the use of ports and auxiliary services.

In January 2009, the EU published its Maritime Transport Strategy 2009-18. In section V of the strategy entitled “working together on the international scene”, the EU has signalled its intentions to support “open and fair competition” in shipping through the development of a “strong and growing network of bilateral transport agreements and dialogues with key shipping and trading partners.” The strategy document cites the EU – China Maritime Transport Agreement as a good example of how the EU intends to work around these issues in the future. It states that the approach is being extended to other negotiations at the present time:

“The maritime transport agreement of 2002 between the Commission and the Member States and China is a good example in this context. The same approach is being followed in ongoing EU bilateral relations and negotiations at regional level, including in the Euro-Mediterranean Cooperation (Euromed), the Union for the Mediterranean or with Mercosur.”
The well organised, resourced and strategic EU’s campaign based around achieving gradual and cumulative change via bi lateral agreements probably represents the most potent long term threat to national maritime cabotage systems as they currently operate.
Over the past 12 years the tide has turned somewhat for unions, operators, maritime organisations and policy makers supporting the use of cabotage. There has been a pronounced shift back to more integrated cabotage systems in a number of countries. The strengthening of cabotage laws and/or growth of coastal shipping in response to cabotage laws in countries such as Brazil, Argentina (2002), Mexico (2005) and Indonesia (2005/8) mark a turning of the tide in the campaigns to defend maritime cabotage.

In these cases, more strategic, thorough and well developed strategies have emerged after experiments with more liberal maritime policy frameworks have failed. All new cabotage systems apply either a stricter form of cabotage or link relaxed cabotage with increased incentives for capital investment and purchase of locally constructed ships. In Argentina, an integrated cabotage regime has been put in place as part of a clutch of regulations aimed at restoring the national flag, following a period where shipping was almost totally deregulated. Merchant marine capacity has long been an important policy goal for many Latin American countries. They have relied on export earnings from agricultural crops, mining and oil, so much so that over 90% of all international trade is carried by ships. Furthermore, the importance of naval capacity and a reserve merchant navy has been borne out of their experiences in the second world war, the negative impacts of globalisation and deregulation in the late decades of the 20 Century and other historic events such as the Blockading of Nicaraguan Harbours by the US Navy – an act that would not have been possible with a strong domestic shipping capability.

The laws in these countries are very comprehensive addressing support for ship building and generally follow a “developmental” framework. Indonesia is following down the Brazilian path linking port reform, privatisation of port facilities and the adoption of the landlord port model with strengthening cabotage and providing support for local ship building and design.

Over the past twenty years only one non European country has removed cabotage from its statute books – New Zealand. Its neighbour Australia has weakened cabotage significantly, but a recently elected Labor Government is committed to strengthening Coastal Shipping and a recent parliamentary enquiry has canvassed policy options for how this might be achieved.
Thus far the WTO has been wholly unsuccessful in raising discussions around maritime cabotage in the Dhosa round and the Uruguay round before that. All the maritime nations within the WTO have been successful in retaining cabotage including the EU which operates a form of regional cabotage.

Finally in 1998, the Jones Act Reform Coalition was disbanded in the face of a comprehensive victory by the Maritime Cabotage Task Force.
Part C – Campaign Tools

1 What is Cabotage?
2 Types of Cabotage
3 Where Cabotage operates
4 Cabotage is growing
5 The arguments that matter: Strategic National Policy Goals
6 Emerging Issues
7 Narrower Arguments about relaxing Cabotage
8 Building Coalitions
9 Deflecting Blame from Cabotage
1 What is Cabotage?

Cabotage is a system of shipping laws and regulations that restrict access to maritime trade conducted exclusively between points within the territorial waters of a nation.

Cabotage laws can apply to marine cargo, passenger services and a wide range of maritime services including dredging, towing, offshore support for oil and gas exploration, floating offshore drilling rigs, seismic research and the laying of submarine cables. In some countries, maritime cabotage is referred to as the “coasting trade”.

In some countries, such as Australia, cabotage law is limited mainly to marine cargoes and some island ferry services. In many other countries, such as USA, Mexico and Canada, cabotage laws apply to a much wider range of maritime shipping services.

Cabotage laws and regulations set out the conditions governing engagement in coastal trade. In almost all cases, cabotage laws require authorised ships to fly the national flag.

These conditions can relate to a range of factors including: ship registration and ownership; citizenship and qualifications of the crew; vessel construction; conditions under which temporary permits may be granted to ships not ordinarily authorised to trade. Sometimes the involvement of foreign owned or crewed vessels, is allowed in clearly defined circumstances. The effect of these requirements is to limit access to coasting trade conferring restricted access rights to appropriately licensed vessels.

In many cases, where cabotage exists, there is a separation between international and cabotage trade. International cargoes, once offloaded at the destination port, must be transported to other coastal destinations by ships registered for cabotage. For example, cabotage trade provides the feeder service delivering containers to smaller terminals along the coast.
2 Types of Cabotage

There are many different types of cabotage operating in the world — it is hard to identify many features that are common to all cabotage frameworks. One principle common to all countries, except Australia, is that ships licensed for cabotage trade should, in principle, carry the national flag. The tools and strategies applied in the defense of cabotage will depend in part on the type of cabotage system in place. This variation among cabotage systems and the conditions in which they operate means that campaign tools need to be tailored to each specific set of national circumstances.

Cabotage regimes can be differentiated based on:

- **scope** – both geographic and maritime activity
- **rigour of compliance requirements** - covering crewing, ownership, ability to obtain waivers and national registration (carrying of the national flag)
- **strategic focus** - the extent to which cabotage is integrated with cross cutting national policy goals and the extent to which cabotage system requires ships to be built locally or contains incentives for local shipbuilding.

Each cabotage system can be defined in terms of these three dimensions – using polar opposite descriptors for each dimension:

- **Scope** will lie somewhere between “narrow” and “broad”
- **Compliance rigour** will lie between “weak” and “strict”
- **Strategic focus** will lie between “simple” and “integrated”

The classification matrix below shows how these polar descriptors can be used to categorise and differentiate cabotage systems.

To illustrate how the matrix is used, the two cases of USA and Australia are compared below.

The Australian regime can be characterised as having a:

- **narrow scope** (limited set of activities, as passenger liners and offshore oil reserve servicing is excluded; and cabotage applies only to interstate coastal trade)
- **weak compliance framework** (no requirement to carry the national flag or national crew; ease of gaining temporary permits for use of foreign vessels without any reflagging
requirement – 30% of domestic freight task undertaken by foreign ships with temporary
permits; no restrictions on foreign ownership of licensed vessels)

- **simple focus** (little strategic linkage with broader national goals; no requirement or
incentives for local construction)

The USA regime can be characterised as having a:

- **broad scope** (covers a broad range of maritime activities including passenger liners,
towing and dredging; broad geographic scope applying to cargoes within continental
USA territorial waters and many external territories)

- **strict compliance framework** (requires US registration and flag; US ownership and
US crewing; waivers are very difficult to obtain on a case by case basis and are available
in only a few instances covered by legislation – Presidential waiver required for special
cases)

- **integrated strategic focus** (**Complex Linkage** with National Policy Goals & Other
Legislative and Policy Frameworks – orientation towards defense preparedness and
strong domestic merchant marine capability as an explicit national goal; requirement
that ships be built and maintained in USA; mutually supporting links with other
programs)

In fact the Australian cabotage regime is unique in that its most significant requirement for
licensing in the coastal trade is that all crew are paid going Australian rates. Finally, the US system
is supported by a strong industry and labour coalition that plays a strong educative role in Congress,
with maritime, defence and energy administrators, the press and general public.
## Cabotage Classification Framework

<table>
<thead>
<tr>
<th>SCOPE</th>
<th>Narrow</th>
<th>Broad</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maritime Activity</td>
<td>Limited</td>
<td>Universal</td>
</tr>
<tr>
<td></td>
<td>Cabotage regime only applies to limited set of cargoes, with stated exceptions eg passenger liners, offshore support vessels, towing. (Australia)</td>
<td>Cabotage law coverage is universal, pertaining to all coastal shipping: passenger, cargo, dredging, towing, offshore support, drilling, scientific research, fishing, cable laying and diving services etc. Applies to full range of domestic merchant marine. USA, Japan, Canada,</td>
</tr>
<tr>
<td>Geography</td>
<td>Cargo Point to Point</td>
<td>All waterways and territorial waters including EEZ</td>
</tr>
<tr>
<td></td>
<td>Scope is usually defined as point to point cargo service. Or in most narrow cases it only applies to interstate maritime trade. (Australia)</td>
<td>Broadest geographic scope is defined as service delivered within territorial waters including exclusive economic zone, or over continental shelf (Canada) (USA) (Brazil)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPLIANCE FRAMEWORK</th>
<th>Weak</th>
<th>Strict</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Flag</td>
<td>No Requirement (Australia)</td>
<td>National Flag Requirement (Most Cases)</td>
</tr>
<tr>
<td>National Crew</td>
<td>No Requirement (Australia) Must pay Australian wage rates</td>
<td>National Crew Requirement All /Most Crew members must be national Citizens (Most Countries)</td>
</tr>
<tr>
<td>Exemptions Waivers, Temporary Permits</td>
<td>OPEN REGIME High Foreign involvement easy permits (Australia) (Indonesia - changing)</td>
<td>CLOSED REGIME Waivers very hard to get – nation self sufficient in most coastal &amp; waterways shipping (Japan) (USA)</td>
</tr>
<tr>
<td>Ownership Restrictions</td>
<td>NO Restriction on foreign capital (Australia) (Brazil)</td>
<td>Low levels of Foreign Investment allowed USA (25% Maximum) Japan (0%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STRATEGIC FOCUS</th>
<th>Simple</th>
<th>Integrated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Links to Strategic National Policy Goals</td>
<td>Little or No linkage with other national policy goals (Australia)</td>
<td>Complex Linkage with National Policy Goals &amp; Other Legislative and Policy Frameworks – defence support, industry policy, maritime safety etc (Brazil, USA, Japan)</td>
</tr>
<tr>
<td>Vessel Origins</td>
<td>No National Build Requirement (Australia)</td>
<td>National Build Requirement or Incentive • National Construction and Repair requirement (USA); or • strong legislated incentives (Brazil) • preference to locally constructed ships or “tariff duty paid” ships (Canada)</td>
</tr>
</tbody>
</table>
3 Where Cabotage operates

Cabotage, in all its various forms, is widespread amongst the world’s maritime nations.

Maritime cabotage laws are found, in some form or other, in most of the world’s major maritime nations and in most nations with significant domestic coastal shipping trade. **Cabotage laws prevail in these countries despite three decades of accelerating globalisation, internationalisation of trade and deregulation within many sectors of national economies.**

In the **Asia Pacific region**, maritime cabotage regimes exist in PRC China, Chinese Taipei, Japan, Republic of Korea, Malaysia, Philippines, Indonesia, Thailand, Turkey, Vietnam, Myanmar, India and Australia. Cabotage restrictions remain in place in all of the ASEAN archipelagic nations and those with extensive coastline – only Brunei, Cambodia, Lao PDR and Singapore are without cabotage restrictions.

Maritime cabotage is widespread throughout **Northern, Central and Southern America**. Cabotage is found in Canada, USA, Mexico, Nicaragua, Honduras, Guyana, Peru, Ecuador, Uruguay, Venezuela, Brazil, Bahamas, Argentina and Chile. African and Middle Eastern countries using cabotage include: Ghana, Nigeria, Ivory Coast, Egypt, and Algeria.

Excluding European nations – where a form of regional cabotage has prevailed since 1998 – at least 35 nations have in place some form of maritime cabotage. If we count in the EU, as a form of regional cabotage, there are most probably over 50 maritime nations where cabotage regimes affect the conduct of coastal shipping services.

**MYTH:** Cabotage is irrelevant in the global economy conferring cost disadvantages to those few nations retaining maritime cabotage.

**FACT:** Cabotage Regimes operate in most of the major maritime countries of the world in Asia, North America, Central and South America, Australasia, South East Asia and Africa. Cabotage regimes exist in both developed and developing economies. Nations with cabotage include USA, Canada, Brazil, Japan, Indonesia, Australia, Malaysia, India, Chinese Taipei, PRC China, South Korea, and Mexico. The European Union operates a form of Regional Cabotage.
4 Cabotage is expanding and strengthening

Anti-cabotage campaigns have largely failed…. Outside Europe, only New Zealand has done away with maritime cabotage …. the World Trade Organisation has been unable to remove or weaken maritime cabotage….In the USA, the US anti-cabotage coalition has disbanded itself in the face of bipartisan support for cabotage…..Recently, many countries have ditched experiments with liberalised shipping regimes and strengthened cabotage laws as part of broader national policies for economic development, security and maritime industry revitalisation…. Recent strengthening of cabotage laws and/or growth of coastal shipping in response to cabotage laws in countries such as Brazil, Argentina, Mexico and Indonesia mark a turning of the tide in the campaigns to defend maritime cabotage. In these cases, more strategic, thorough and well developed strategies have emerged after experiments with more liberal maritime policy frameworks have failed.

Only one country, New Zealand, has removed cabotage from its statute books. Its neighbour, Australia, has also weakened cabotage significantly, but the recently elected Australian Labor Government is committed to strengthening coastal shipping. Within Australia, a recent parliamentary enquiry has canvassed policy options for how a strengthening of cabotage this might be achieved.

The WTO has been unsuccessful in raising discussions around maritime cabotage and all the maritime nations within the WTO retain cabotage including the EU which operates a form of regional cabotage.
MYTH: Cabotage is contracting around the Globe as the World Trade Organisation reduces barriers to the free trade of goods and services and national economies remove tariffs and other barriers to trade.

FACT:
In South America and Asia, many countries have introduced new, stronger and more strategic cabotage laws that support the revitalisation of maritime industry and employment. They have introduced new cabotage laws after experiments with deregulated and relaxed cabotage and vessel registration schemes failed dismally. This new wave of cabotage is a smart and strategic response to building coastal shipping and maritime employment.

FACT:
In Argentina, Brazil and Indonesia the number of national flagged ships and tonnages carried by national flagged vessels increased in the years after the new cabotage regulations were introduced.

FACT:
Australia is actively investigating how to strengthen coastal shipping, the anti Cabotage coalition in the USA has disbanded for want of political support.

FACT:
Only New Zealand, a comparatively weak maritime nation, is out of step with the world in having removed cabotage laws. This hardly amounts to a movement.

FACT:
The new US president has publicly backed US Maritime Cabotage. The US will continue to oppose the WTO extending negotiations to include Cabotage Laws.
The arguments that matter: Strategic Policy Goals

Cabotage will not stand or fall on price arguments…. Anti-Cabotage campaigns have failed because of a single focus on achieving a lower price for shipping ….By focusing on the price of shipping, they have lost the political debate thus far, because they have failed to address those strategic, “cross cutting” national policy goals supported by cabotage…

A key to winning support for cabotage is to tie together cabotage and these important national goals, building a wide constituency and broad based political support in legislatures.

Anti-cabotage campaigners focus their arguments on the price of regulated coastal shipping versus international shipping. International shipping enjoys a range of considerable cost advantages over coastal shipping. It operates free from many national legislated frameworks providing important industry, safety and employment standards. International shippers also enjoy a number of other economic advantages including the ability to provide services at marginal cost as part of back trading. While international shipping, can often provide cheaper

Firstly, these price based arguments overlook the fact that other business services (including transport services) operating within national territories must be legally registered and operate according to the employment and business laws of the land. There is no sufficient logical, legal or ethical argument to suggest that shippers engaged in coastal shipping should be provided with any exemption to this on the basis that such services are available. Legislated community standards are exactly that. They should apply to commercial services delivered between national ports within territorial waters, as much as within territorial waters.

The various case studies show that cabotage regimes are strongest and least vulnerable to attack in those countries where the cabotage laws are framed to support overarching, cross cutting policy goals of national strategic importance. In these countries, cabotage not only supports broader policy goals but it is also reinforced and buttressed by other legislative frameworks. It is part of a bigger policy picture. These include immigration, defence support, industry assistance for ship building and shipping modernisation, port development, transport infrastructure, homeland security and so on.
These goals vary from country to country as does the character of cabotage regimes. They include but are not limited to:

- **National defence preparedness,**
- **maritime and homeland security,**
- **maritime safety,**
- **marine environmental protection,**
- **increased share of cargo transported by sea** as a means of achieving carbon reductions and land based environmental stress,
- **development of merchant marine capability and skill base** in support of strategic industries, port infrastructure and port services
- **increased national earnings from retained export income and seafarer taxation**
- **broader industry development** through the agency of shipbuilding and related inputs and high value services and engineering,
- **services and access to distant and remote coastal ports as part of support for social capital and remote communities.**

**Brazil, USA and Japan** have each developed distinctive and unique forms of integrated cabotage based around a selection of such over-arching national goals.

In the case of **Brazil**, the cabotage regime is located within a complex set of developmental strategies aimed at revitalising maritime industry as a whole including ports, logistics infrastructure, ship-building and related input manufacturing including high value engineering, electronics, chemicals and steel production. The cabotage regime is structured to attract overseas capital with expertise in shipping logistics and terminal operation.

Brazilian policies are supported by a range of financial support measures including tax incentives, direct grants and soft loans for ship building. Finally, the crewing and purchasing policies of the state controlled energy conglomerate, Petrobrás, is important and complementary to other maritime policies. Petrobrás is committed to a Brazilian built and operated fleet and has growing and extensive needs for specialist offshore support vessels and tanker fleet renewal.

The structuring of cabotage laws is vitally important as a means of attracting the capital partners so vital to achieving port expansion, world class terminals and improved coastal shipping performance. These will be needed if Brazil is to meet its environmental goal of doubling the share of total domestic cargoes carried by coastal shipping by 2025. Other nations to have recently strengthened cabotage laws and positioned them within over-arching “develop mentalist” policy settings include Indonesia, Mexico, and Argentina.
The **USA model** is vastly different to Brazilian cabotage. The overarching goals of the Jones Act in the USA are located in Section 27 of the Merchant Marine Act 1920 which states that the act “is necessary for the national defense” and that the USA “should have the best equipped merchant marine and most suitable vessels to carry the bulk of its commerce and serve as a naval or military auxiliary”. The act declares that it should be the policy of the United States “to develop and encourage the maintenance of such a merchant marine”. The act directs that the secretary of Transportation should be directed by these goals in making regulations pertaining to the administration of shipping laws.

The Jones Act addresses this primary policy goal by reserving cargo between any two points in the United States for ships registered and built in the USA, owned by a US corporation, and crewed by US seafarers. Under the Act, only USA shipbuilders can supply ships for the cabotage trade - foreign-built vessels cannot be sold or leased for use in US cabotage trade. The USA has been exempted from GATT rules for this legislative provision.

A number of other acts and regulations support the merchant marine and the same national policy goals that the Jones Act supports. This mutually reinforcing set of policies and regulations is a testimony to how faithfully US legislators have held to the original policy intent over almost 90 years. Since 1920, all American presidents and administrations have supported the Act right up to the current day administration of President Barak Obama.

The other main programmes and measures supporting the naval reserve status and general capabilities of the Jones Fleet include: **Maritime Security Program, Voluntary Intermodal Sealift Agreement (VISA) program, Food Security Act, Ocean Freight Differential Program, tax benefits to ship leasers constructing ships in USA, and direct funding support to ship operators and shipbuilders from MARAD.**

In Japan, an integrated cabotage system promotes employment base within small and medium sized enterprises, orderly competition and optimal shipping volumes.

There are no broad generic arguments which can easily be translated from country to country. Arguments need to be developed according to national policy goals, economic and social conditions and the state of development of the coastal shipping fleet. A lesson of the last decades is the importance of translating objectives of maritime cabotage into broader national policy goals with which legislatures, the public and the media can relate. In the current global crisis, foundations for these broader links might first stem from basic campaigns aimed at gaining public preference for job security of local seafarers on board nationally flagged ships over the use of cheaper flag of convenience and foreign ships.
Emerging Issues

In the very near future, cabotage regimes will operate in a world with changing priorities set by new economic and environmental imperatives. Cabotage regimes and other closely related policy frameworks will need to adapt in order to address most of these new imperatives. Innovative policy can ensure that cabotage remains relevant and plays a positive role in supporting these imperatives including:

- **New forms of integrated logistics and shipping organisation.** This includes the development of new shipping patterns based on hub and feeder ports and landside multi modal networks. In some places, this will lead to increasing reliance on short – sea shipping and in further development of feeder container ports with an increased demand for specialised coastal container ships. Cabotage regulatory frameworks will need to complement policies on port infrastructure development and modernisation of domestic general and bulk cargo fleets. Maritime Skills Formation will need to keep pace with skill and knowledge sets required for integrated logistics. Cabotage regulatory framework is not likely to function effectively without complementary policies to ensure investment in new terminal capacity and modern specialised coastal feeder shipping.

- **Increasing pressure for greater shares of national domestic cargoes to be carried by coastal shipping** as part of national and international programs to reduce carbon footprints and reduce land based transport congestion. Such policies are already in place in the EU, Japan and Brazil and are likely to extend elsewhere. Cabotage Laws is an important policy tool for helping to achieve an increased share of domestic freight task taken on by coastal shipping – By establishing limited market access they help establish pre – conditions for creating maximum coverage of coastal potential shipping routes. On the other hand deregulation of coastal shipping would most likely reduce the number of routes serviced by coastal shipping.

- Increasing pressure to lift performance in the management and protection of marine environments.

- **Loss of maritime skills base,** in countries where cabotage has been relaxed for some time may, have major repercussions for skill availability in waterway management, port services and logistics.
Each of these imperatives presents opportunities for adapting and strengthening cabotage so that it becomes even more relevant to pressing national policy goals. This will require flexible and innovative responses from unions and other pro-cabotage organisations. Otherwise, new developments could be used as a means of weakening cabotage frameworks - as has been the case in Canada, where short sea shipping has been proposed by some as a possible way forward in achieving liberalisation of cabotage laws in Canada.
Narrower Arguments about relaxing cabotage

It is important not to automatically concede points on cost based arguments put forward by anti-cabotage forces. Many can be countered.

1. The relaxation or removal of cabotage may, in some circumstances, lead to loss of service, rather than cheaper services. In a deregulated market, new market entrants can be expected to operate on the major profit making routes. Cabotage often provides certainty in the business environment that enables smaller operators to trade on coastal routes returning low, sometimes marginal, levels of profitability. There is a risk that after relaxing cabotage laws, new operators will flush out business causing the withdrawal of local operators who can not withstand the competition. There is a high risk that some services will be lost when new entrants then withdraw from routes not generating sufficient profits. In Australia, independent studies have suggested that removal of cabotage may lead to the loss of up to 80% of services. In this context, cabotage provides a relatively cheap policy option for maximizing local participation in shipping and enabling services to remoter less profitable ports and communities.

2. There is no guarantee that if cabotage laws were removed, the commercial practices of operators will not lead to high levels of profit taking leaving little net benefit for consumers or cargo owners.

3. Careful consideration needs to be given to the claims made by anti-cabotage spokespersons about impacts of deregulation - some independent analysis is advised. The effects on transport and product pricing arising from the relaxation of cabotage would vary depending on industry structure and the shipping profile. Shipping costs will tend to represent a higher proportion of product value for commodities than will be the case for elaborately transformed manufactured goods. In some cases, the extra cost to the consumer (or producer) may not be that significant. For example, The USA Maritime Cabotage Task Force has claimed that a 50% decrease in shipping freight rates for unleaded gasoline would effect the price of fuel at the pump by as little as one cent per gallon or on average $7 a year per motorist.

4. Windfall gains may flow from taking advantage of marginal costing on cross trading vessels in a deregulated market – but these may well be offset by irregularities in service as foreign ships change routes to optimize cargoes and returns. Furthermore the same factors may lead to delays and the inability of cross traders to always meet schedules. In such cases hidden, intangible costs can outweigh gains.
Deregulation and reliance on cross trading can expose thin markets to a high risk because of the loss of fallback positions when local ships are not available – since inevitably uncompetitive pricing will destroy local capacity. A similar argument can be applied to shipping of single commodity cargoes controlled by shippers as part of vertically integrated processes. Where this involves inputs to industrial processes – eg steel making, oil refining – long delays are not affordable. In these circumstances, a deregulated market might require contracting a suitable foreign fleet for an extended period of time at premium prices.
8 Coalitions & Support

The most effective means of defending cabotage is to ensure that regulations are integrated with broader national policy goals. This is best achieved through formal or informal coalition of interest groups and stakeholders sharing commitment to similar outcomes. The successes of the MCTF in the USA demonstrate this point. Depending on the mix of policy goals involved in a campaign, such coalition’s stakeholders might include representatives of:

- **Shipping Firms** – local industry base (critical in achieving strengthening of cabotage in Indonesia and defending cabotage in USA)
- **Climate Change Groups, Environmentalists and Environmental regulators** - around shift to sea transport in support of reduced carbon footprints in transport services and enhanced marine environment protection
- **Defence Support** - senior administrators and supply firms
- **Port Communities** – particularly those that would benefit from increased throughput in regional localities
- **Maritime Services and Waterways administrators** – need for skills on landside operations
- **Developmental Economists and policy makers in economic development departments**
- **Remote and Island Communities**
- **Engineering Regions** benefiting from increased building and repair activities
- **Logistics and landside supply chain unions**
9 Deflecting Blame from Cabotage

Cabotage is sometimes blamed for a host of performance issues such as:

- Aging ships (Failure of fleet modernisation)
- Port congestion and low investment in terminals, or
- Decline in shipbuilding, repair and servicing capacity.

Where these symptoms occur, cabotage critics are quick to blame cabotage laws and local shipping firms operating within protected coastal markets. However, Brazil demonstrates that cabotage can operate effectively as a supporting policy arm for other measures that promote ship building and investment in infrastructure. Rather than retarding investment, large shipping and logistic firms attracted to the cabotage trade also invest in expansion of port infrastructure.

Cabotage is not the cause of any lack of investment in new ships, port bottlenecks or outdated terminals. The fault is more likely to lie with failings in broader policy frameworks for industry growth, investment and infrastructure development.

Where maritime services are underdeveloped, however, it makes sense to investigate whether or not cabotage regulations could be used more effectively in tandem with other policy measures to address these important issues. In such cases it may pay to be proactive, if the opportunity arises.
PART D

Case Studies

1 Brazil

Cabotage is just one element of Brazil’s economic development armoury – one of many policies in an interlocking set of policies aimed at revitalising port infrastructure, shipbuilding and related maritime services while supporting broader economic growth.

Brazil’s maritime industries have experienced a recent resurgence, largely due to the way in which Government has levered broader industry capacity off the development of the nation’s abundant offshore oil and gas reserves. Cabotage, tax measures, government incentives and the purchasing policies of Petrobras, the state controlled integrated energy corporation, have all played crucial role in this maritime resurgence.

This resurgence has not occurred overnight - it is the latest of three distinct phases in the development of Brazil’s post war maritime capacity. These three stages can be characterised as:

1 Expansion – “the Brazilian Miracle” (1960’s to early 1980s)
2 Collapse (mid 1980s to late 1990s)
3 21st C Resurgence

In the first section of the Brazilian case study we look at these three phases of Brazilian maritime development. Cabotage policies are a feature of all three stages – though the legal frameworks and significance of cabotage shipping within Brazilian maritime industry varies in each stage.

The Expansion Phase

For much of this period, Brazil was under a military government. Shipbuilding and shipping both prospered and expanded under its patronage and highly interventionist strategies. Economic development was underpinned by import-replacing industrialisation and agricultural export growth. Ship building was considered a critical component of industrialisation and import
replacement. It was emblematic of successful industrialisation and, more importantly, fed demand for Brazilian steel plate and other inputs manufactured locally under license. Maritime industry therefore seen as an incubator of industrial skills; the means of maritime security and self reliance; and a solution to protecting foreign reserves reducing fees payable to foreign shippers of Brazils growing agricultural exports.

In 1958, after unsuccessful efforts by the National Development Bank to kick start Shipbuilding, the Merchant Marine Fund (FMM) was established under the authority of the Merchant Marine Commission in order to finance Brazilian ship construction. Initially, the FMM was funded by a 15% tax on cabotage trade and a 5% tax on overseas shipping. A Government Task Force investigated shipbuilding needs and invited tenders for the establishment of three shipyards: Caneco (Brazilian), Ishima (Japanese) and Verolme (Dutch). Locally produced ships were much more costly than overseas built ships but gap funds were provided by FFM.

These early ambitious plans ran into difficulties. By mid sixties, there was a crisis in shipbuilding as ships were proving too costly to build and orders were not sufficient to sustain three yards. Rather than rationalise the industry, the military government committed to the further expansion of the shipbuilding.

In 1967, the government laid out The Emergency Ship Building plan for 1967 -70, setting a production target of 0.5 million Dwt to be constructed by 1969. In order to generate demand for new ships government took a tight rein on maritime policy using strict market regulation and control of shipping to guarantee demand for new ships. Brazilian Liner Conferences were re-organised under strict governmental control. All publicly owned lines were required to report directly to a single agency, the Superintendency of the Merchant Marine (SUNAMAM). Three shipping companies dominated shipping. Petrobras, the state owned oil company was dominant in tanker trade due to its monopoly positioning in the production, refining, and importation of petroleum product. Docenave dominated dry bulk shipping and Lloyd Brasilero was the dominant cargo line in the agricultural commodity export trade. Government tightly supervised private shipping by: authorizing which ship owners operated in each service and route; controlling chartering; controlling the purchase and sale of ships; and, determining freight rates.

The government used cargo reservation in both deep sea and coastal shipping to generate the demand for new ships to be constructed at Brazilian shipyards. Only Liner Conferences were allowed access to deep sea shipping and at least 40% of cargo revenue was reserved for Brazilian vessels in each trade, with half going to the state owned Lloyd Brasilero line. All cabotage and all government favoured, owned or financed import cargoes were reserved for Brazilian ships. Strict import controls meant the vast bulk of import cargoes were affected, although reciprocity
arrangements effectively reduced the Brazilian share of import to around half. Tight regulation of shipping and freight rates combined with cargo reservation delivered both market stability and profitability for Brazilian companies favored by the government.

Market regulation generated demand for new ships, but not the necessary finance for construction. The Funds used to support shipbuilding, disbursed from the Merchant Marine Fund (FMM) were generated mainly by a tax on import and cabotage freight. Other support came from a range of tax incentives, direct and indirect subsidies supporting growth of shipbuilding and related industries. During the expansion period, tax on ocean freight increased from 5% to a peak of 50% in 1983. Tax on Cabotage increased to 20%. The fund was used to finance the difference in cost between ships built overseas and those built in Brazil.

The government coordinated shipbuilding growth within the framework of national Shipbuilding Plans. In ten years there were three such plans. There was a six-fold increase in shipbuilding capacity and output in the ten years between the end of the first Emergency Shipbuilding Plan and the second Shipbuilding plan in 1979. By then, Brazilian shipyards were producing 2.6 Million dwt in shipping and ranked second in the world in terms of shipbuilding output.

For two expansionary decades, the Brazilian model of combining state ownership with tightly regulated shipping, cargo reservation, tax incentives and freight taxes to build maritime industry capacity was spectacularly successful. By 1984 there over 160 Brazilian ships in the deep sea trade, 8000 mil Dwt and close to 2000mil DWT in cabotage. However, there were inherent structural weaknesses to the growth trajectory. The policies did not produce sufficient increases in productivity, technological advance or the managerial skills necessary to successfully overcome the adverse circumstances of the immediate decades ahead. Furthermore, there were limits to the financing methods and tax regimes that underpinned the fleet construction.

**Maritime Decline 1984 - 2000**

Both the politics and economics of this period contrasted with the previous expansionary period. A democratically elected government came to power in a period of deepening economic crisis with a policy preference for market deregulation and privatization. The period was marked by low growth, high inflation, low rates of investment and, high levels of foreign debt. In the early eighties, growth slowed dramatically.

Triple digit inflation and a general economic crisis in 1986 provoked negotiations with the IMF, austerity measures and the rescheduling of foreign debt payments. Successive monetary
stabilisation programmes were invoked in an attempt to bring inflation under control. These economic difficulties were encountered precisely at the time at which globalization, flags of convenience shipping and containerization were revolutionizing world shipping practices. State controlled shipping lines had amassed high levels of debt. With austerity measures and other IMF disciplines in place, the Brazilian maritime industries lacked the organisation and access to the capital necessary to meet the new challenges of the period.

Faced with the mounting debt, the government abandoned the policies that had been so successful in building the Brazilian fleet and shipbuilding capacity. In 1984, Liner Conferences lost their exclusive right to deep sea cargoes. Foreign shipping gained unrestricted access. In 1991, Cargo reservation was revoked for Coffee, Cotton and Cocoa. Government authorisation was no longer required for participation in deep sea trade. Widespread privatisation and deregulation reduced the level of government owned or financed imports carried by Brazilian ships. The process of dismantling the earlier policy structures was chaotic – there no cogent or coherent policy framework presented to replace the former maritime industry framework, nor any policy of structural adjustment.

With the removal of these market supports, many Brazilian shipping lines closed or were privatised. Reservation of petrochemical cargoes remained, with the state owned Petrobras continuing to dominate the oil production and tanker trades. Petrobras was the only one of the major Brazilian lines operating in the expansion period to stay in operation. Later, it would play a lead role in the resurgence of Brazilian shipbuilding and shipping.

The decline in the shipping sector was dramatic. In 15 years between 1984 and 1999, Brazilian deep sea shipping tonnage declined from 8 million dwt to around 2 million dwt. The number of Brazilian ships fell by 75% from 160 to 40. In 1984, 20% of deep sea shipping carrying export cargoes carried Brazilian Flag. By 2000 the proportion had dwindled to around 2%. Fully 85% of shipping was controlled by foreign shippers and almost all the remaining cargoes were carried by Brazilian chartered overseas ships. This compared with previous decades when overseas shipping carried around just 50 – 60% of all cargoes.

The decline of the Brazilian deep sea fleet and the removal of supporting market mechanisms ultimately brought an end to large scale shipbuilding. Other factors such as the cost of industrial supplies, lagging technology, lack of capital due to austerity measures and changes in the global shipping market environment also undermined the viability of the yards. Shipyards found it increasingly difficult to stay open in the face of high inflation and declining domestic orders. Attempts at generating export based revitalization failed, not at all helped by prevailing exchange
rates. By 1994 most of the ship yards had ceased building – the impact of last monetary stabilization program being the death blow to an ailing industry.

**Port Privatisation**
Between 1990 and 1998, sweeping changes were introduced to the management of ports and ownership of terminals. In 1990, Law 8029 authorised the dissolution of the state owned company Portrobras, run out of the Ministry of Transportation, which supervised port administration and the dock companies; private and public port concession companies and private use terminals. The dissolution led up to the introduction of Law 8630-Modernization of Ports in 1993, following on extensive and organized lobbying by business interests tied to the export sector.

The law set in train:

- The decentralization of Port Administration and the establishment of local Port Authority Councils.
- The establishment of Labor Management Bodies to supply port workers (including dockers) and to establish a register of workers within the jurisdictions of each of the Port Authority Councils. These were a direct attack on the organisation of trade unions and their involvement in hiring processes.

Comprehensive deregulation of port services ensued through a port privatization program. This program involved:

- Port operating concessions;
- Leasing out of facilities to the private sector; and,
- Licensing of port terminals for private use.

Hiring and employment practices were also targets of the new Law, as were the dockers union. Throughout Latin America and the Caribbean at the time, there were many difficult struggles on the waterfront around containerization, redundancies, privatization and changed work practices. Brazil was no exception. As a direct consequence of the modernization law, privatization and containerisation, the number of workers employed at public ports fell from 26,400 in 1990 to about 5,000 at the beginning of 1997.

By 1997, localized Port Authority Councils administered all Brazil’s major ports. Private leasing of terminals was successfully concluded in the largest public ports of Santos, Rio de Janeiro, September, and Rio Grande. By 2000, nearly 70% of cargo (350 million t) was handled by privately operated terminals.
By 1998, all the major shipbuilders had closed. The overseas shipping lines were decimated or sold off. Tens of thousands of metalworkers and seafarers lost their jobs. Port administration was decentralized and Port Authorities transformed into landlords with the bulk facilities and terminals essentially privatized or on long term leases. The delayed process of containerization was now underway and over 20,000 dock worker had lost their jobs.

Two features of the expansionary era remained, though not unchanged: the state operated Petrobras and the Cabotage trade. Both were to play pivotal roles in the resurgence of Brazilian maritime capacity in the new century. In 1997, both underwent major change.

## 3 Maritime Resurgence

In contrast to the collapse of the preceding decades, Brazil’s maritime industries are now in resurgence. This is due, in large part, to the government’s determination to take advantage of substantial and deep off-shore oil & gas reserves to maximize industrial development and employment. In this respect, the Brazilian policies contain echoes of successful Norwegian policies of the 1970s.

In the first expansion era, demand for new ships was achieved though market regulation and the reservation of cargoes to Brazilian Conference Lines. Now the purchasing policies of Petrobras underpin growth in shipbuilding, many of which are destined for the domestic fleet. Renewed demand for tankers, offshore support vessels, rigs and production platforms, has led to the reopening of all but one shipyard and construction of new shipyards. Major overseas ship constructor’s equity interests in the new yards and participate in technology transfer arrangements. In section 3.1 below, Petrobras is profiled along with its various fleet renewal programs.

Brazilian maritime policy is concerned with more than Petrobras. Four critical interrelated issues:

1. Expand and modernize capacity of international terminals to efficiently handle rapidly volumes of ocean traded cargoes.
2. Expand absolute volumes and shares of domestic cargoes carried by maritime cabotage to reduce the high transport costs and environmental damage caused by an over-reliance on road haulage
3. Develop coastal feeder port capacities and cabotage fleets to enable short sea shipping from the Brazilian global hub port
4. Develop price competitive and world class shipbuilding and maritime support industries
Government policy for more than a decade has been to attract both local and foreign investment in Shipbuilding, Coastal and Mercosul shipping, Terminals and Port Infrastructure. Because of the amount of capital involved and the necessity to continually expand and modernize capacity, an objective has been to seek the involvement of major global shipbuilders, terminal operators, shipping lines and shipping support companies alongside Brazilian operations. To achieve this, the government uses a complex mix of financial support measures, tax incentives, and access to the restricted and potentially lucrative cabotage trade.

Three important mutually supporting policy frameworks:

- Cabotage
- Port infrastructure development
- Ship building support measures

Each of these are covered in some detail below.

**Cabotage**

**The Constitutional changes of 1995** removed Cabotage provisions from the constitution and made them subject to Legislation. New laws enacted between 1997 and 2000 substantially amended the operation and administration of Cabotage in Brazil. An effect of the new laws was to attract capital and the involvement of overseas shipping companies. The laws were designed to assist the capital development of the fleet and to attract major lines whose operations would be in alignment with privately owned and operated terminal capacity.

Any ‘Brazilian Vessel’ has the right to use the Brazilian flag. The Brazilian flag may be flown if:

- It is registered with the Ownership Registry, in the name of either a Brazilian company or an individual with residence and domicile in Brazil; or
- chartered by a ‘Brazilian shipping company - EBN’ under bareboat charter and the original flag is suspended

A Brazilian shipping company (EBN) is any company whose purpose is to conduct shipping and is:

- registered in Brazil
- headquartered in Brazil
- have at least one ship with appropriate authorizations for maritime transportation.
A minimum liquid capital of R$8 million is required for long-haul navigation, R$6 million for cabotage, and R$2.5 million for port or maritime support navigation. There are no restrictions on the national origin of the capital, Brazilian Shipping companies may therefore be 100% subsidiaries of overseas companies.

Brazilian ships must be registered in the Registry of Maritime Property, as mandated by Law No. 7,652/88.

Law 9432/97 regulates water transport. The Law is liberal with respect to international shipping which is open to shipping companies, ship owners and vessels from all countries.

However, the law is more stringent in its application to ownership and flagging limitations in respect to cabotage (including port and offshore support vessels). Cabotage is only available to:

- vessels flying the Brazilian flag and
- operated by a Brazilian national or Brazilian shipping company (EBN).

The law sets up the possibility or option for Brazilian flag vessels to also be registered in the Special Brazilian Registry (REB). This option is available to Brazilian shipping companies (EBNs) which have ships under construction in a shipyard established in the country. Brazilian shipping companies (EBNs) with REB registered ships qualify for a number of direct and indirect benefits aimed at developing Brazilian shipbuilding. These are dealt with below.

A foreign vessel can be used to carry cargoes in coastal shipping, domestic inland navigation (or for port or maritime support shipping) without the need for special authorization, if:

- It is under bare boat charter by an EBN
- Re-flagged with the Brazilian flag, and
- It is no more than twice the tonnage of vessels of a similar type ordered to a Brazilian shipyard.

Authorisation may be granted for foreign ships to be used in coastal shipping and offshore support roles, when they are chartered by Brazilian shipping companies subject to a number of important conditions:

- Non-availability of a suitable vessel with proper Brazilian flag; or
- Public interest; or
If the vessel is in replacement (for no more than 36 months) of a vessel being built in a Brazilian shipyard.

**Restrictions on crew nationality**

Under Law 9432/97, the master, the chief engineer and two-thirds of the crew of Brazilian-flag vessels must be Brazilian. The law is less stringent for vessels enrolled in the Special Brazilian Register (REB). In this case only the master and the chief engineer are required to be Brazilian.

**Shipping support measures and cabotage tax**

Brazil charges a special tax for the upkeep of the merchant marine (Adicional de Frete para Renovação da Marinha Mercante, AFRMM). The tax is based on freight charged in Brazilian ports and has been the principal source of fund for the Merchant Marine Fund (FMM) for many decades.

The fund is managed by the national Development Bank (BNDES) and finances:

- Ship construction, repair and modifications in Brazil,
- Investment in existing and new Brazilian shipyards and facilities.

In its current reincarnation the AFRMM operates under Law No. 10,893 of 2004. The tax charged is 10% of the freight for transportation between Brazilian ports (cabotage); 25% for international shipping by both Brazilian and foreign carriers; and 40% in north-east inland waterway transportation of liquid bulk cargoes.

The construction and maintenance of REB-registered ships in Brazilian shipyards benefit from the same fiscal treatment granted to exports of industrial goods in general.

Brazilian shipbuilders and shipyards established in the country may receive credits from the BNDES at interest rates ranging from 4% to 6%, with repayment periods of up to 20 years, and for up to 90% of the total cost of the project. (See table below)

**Cabotage Regulatory bodies**

Administration of cabotage related laws and regulations are mainly in the hands of:

- The National Water Transport Agency (Agência Nacional de Transportes Aquaviários - ANTAQ) and
- The Brazilian Navy.

ANTAQ was created by Law 10233/2001. It regulates and oversees:
o Maritime and inland water shipping
o Organized ports and port terminals;
o Transportation of special and dangerous cargos.

ANTAQ is responsible for the general overseeing of the registration of vessels and workers and maritime traffic of vessels in Brazilian waters. The Brazilian Navy regulates practical matters pertaining to shipping in Brazilian waters such as routes and traffic of vessels, crew activities and safety rules. ANTAQ’s activities observe the rules laid down by the Brazilian Navy on safety of life, shipping and navigation. The Brazilian Navy issues, via the Port and Seashore Office the Maritime Authority Rules (‘Normam’) that are applied together with labor and immigration regulations.

Changing profile of the cabotage fleet

The domestic Brazilian fleet has undergone major change in its profile over the last decade. Firstly, Oil and Gas sector has become more prominent. The domestic fleet is now dominated by tankers and Offshore supply vessels. Not only Transpetro fleet, but the vessels under direct charter to Petrobras. There is a high degree of vertical and horizontal integration within the oil related fleets. One element of this is the vertical integration of specialist OSV fleet managers such as the Brazilian subsidiary of the Louisiana headquartered Chouest attracted to Brazil as a consequence of growing cabotage markets, demand for OSVs and soft loan arrangements for shipbuilding.

Secondly, as conditions worsened for international shippers in the nineties, some contracted to the cabotage services such as the international Ro-Ro operations of Transroll Navig which had previously benefited from international trade in Fiat automobiles. Ultimately the Transroll fleet was chartered out to AP Moeller Maersk’s Brazilian cabotage operations.

Thirdly, the Cabotage regime has been successful in attracting major global network terminal (GNT’s) operators to participate in the cabotage trade. In 1999 P&O Nedlloyd invested in local cabotage and logistics operations. It followed this up with further investments in logistics and shipping in 2002. In 2005 the P&O logistics operations and P&O Nedlloyd’s Brazilian shipping subsidiary, Mercosul, was taken over by A.P.Moller-Maersk. The German based Hamburg Sud is also committed to the cabotage operations of its Brazilian subsidiary Alianca. Just late last year the French line CMA CGM announced it would also begin operating in the Brazilian cabotage trade in 2009.

In 2006, Docenave, the shipping arm of the Brazilian global mining conglomerate Cia Vale do Rio Doce spun off the shipping and logistics firm Login Logistica. Vale retains 30% shareholding but Mitsui holds 5% and overseas interest another 30%. Log-in’s principal business is the operation of
coastal feeder services along the South American East coast - hence a heavy involvement in Brazilian Cabotage. The company has announced in late 2007 a plan to build five 2700 TEU new container ships at a cost just under US$ 400 million. The Marine Merchant Fund has made available a soft loan to Log-In covering fully 90% of construction costs for new box ships to be built at the EISA shipyard in Rio. Log-in currently operates three smaller box ships with a total capacity of 3200 TEU. In May last year, the logistics and container ship company announced its entry into bulk shipping with a $1bn contract to transport 6 million tones of bauxite ore a year between the Northern Brazil ports of Trombetas and Vila do Conde for Alunorte.

Four companies — Aliança Navegaçao, Log-In, Mercosul and now CGM — are now competing for an industry Containers carried (through private sector terminals) that has expanded an annual tonnage of 90,000 teu in 2000 to 500,000 teu in 2008

**Port and Terminal Development**

Over the past decade public and private investments totaling US$3 Billion have been made in 45 ports (37 of these are coastal ports, the others river ports) Thoroughgoing program of port privatization means that two thirds of all cargoes are now handled by 121 private port facilities. There has been an increase of 277% in the number of containers handled between 1993 and 2005.

The recent Reporto Laws and new Tax incentives provide further stimulus for investment in expanded port infrastructure and private public partnerships further encouraging a strong link between GNT investment and coastal feeder trade in cabotage.

**Ship building support measures**

There are a wide range of ship building support measures built into cabotage regulations and other aspects of government policy including the links with Petrobras purchasing and soft loans made available for ship builds and ship yard investment itself through the FMM.

Major new shipyards have been opened recently attracting direct investment in joint venture partnerships with Brazilian engineers from leading Korean, Singapore and Norwegian based builders. Recently major cash injections of several billion dollars was made by the development bank into Brazilian shipyards to ensure that they were unaffected by the global financial crisis.
### Table 7 SCHEDULE OF SHIPBUILDING SOFT LOANS THROUGH FMM (Source: BNDES Website)

<table>
<thead>
<tr>
<th>Vessels Not Registered in the REB (Special Brazilian Registry)</th>
<th>Purpose</th>
<th>Grace Period</th>
<th>Repayment Period</th>
<th>Maximum Share</th>
<th>Interest rates (% p.a.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Brazilian Navigation Company</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction of vessel</td>
<td>Up to 4 years</td>
<td>Up to 20 years</td>
<td>Up to 90%</td>
<td>2.5 to 5</td>
<td></td>
</tr>
<tr>
<td>Jumborization, conversion or modernization of own vessel</td>
<td>Up to 4 years</td>
<td>Up to 15 years</td>
<td>Up to 90%</td>
<td>3 to 6</td>
<td></td>
</tr>
<tr>
<td>Acquisition and installation of equipment</td>
<td>Up to 2 years</td>
<td>Up to 5 years</td>
<td>Up to 90%</td>
<td>3 to 6 if national contents is over 60%= 3 to 4</td>
<td></td>
</tr>
<tr>
<td>Repair of own vessel</td>
<td>Up to 1 year</td>
<td>Up to 2 years</td>
<td>Up to 90%</td>
<td>3 to 6</td>
<td></td>
</tr>
<tr>
<td>Projects for research and scientific or technological development and formation and improvement of human resources directed to Merchant Marine, construction or naval repair sectors</td>
<td>Up to 2 years</td>
<td>Up to 10 years</td>
<td>Up to 90%</td>
<td>1 to 3</td>
<td></td>
</tr>
<tr>
<td><strong>Other Brazilian Companies</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repair of own vessel for commercial, industrial or extractive application in Brazilian shipyard</td>
<td>Up to 1 year</td>
<td>Up to 2 years</td>
<td>Up to 90%</td>
<td>3 to 6</td>
<td></td>
</tr>
<tr>
<td>Construction, jumborization, conversion or modernization of any type of own vessel, of commercial, industrial or extractive application</td>
<td>Up to 4 years</td>
<td>Up to 15 years</td>
<td>Up to 90%</td>
<td>3 to 6</td>
<td></td>
</tr>
<tr>
<td>Projects for research and scientific or technological development and formation and improvement of human resources directed to Merchant Marine, construction or naval repair sectors</td>
<td>Up to 2 years</td>
<td>Up to 10 years</td>
<td>Up to 90%</td>
<td>1 to 3</td>
<td></td>
</tr>
<tr>
<td><strong>Navigation Company</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction or production of vessel destined to fluvial transport of passengers, of high social interest</td>
<td>Up to 4 years</td>
<td>Up to 20 years</td>
<td>Up to 100%</td>
<td>1 to 3</td>
<td></td>
</tr>
<tr>
<td><strong>Brazilian Shipyards</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repair of vessel</td>
<td>Up to 1 year</td>
<td>Up to 2 years</td>
<td>Up to 90%</td>
<td>3 to 6</td>
<td></td>
</tr>
<tr>
<td>Production of vessel destined to a Brazilian navigation company or to export</td>
<td>-</td>
<td>Until the 5th business day following the foreign exchange closing related to the payment of the vessel price or at the maturity date established in the Production Financing Agreement, whichever takes place first</td>
<td>Up to 90%</td>
<td>3 to 5</td>
<td></td>
</tr>
<tr>
<td>Expansion and modernization of shipyard installations</td>
<td>Up to 2 years</td>
<td>Up to 10 years</td>
<td>Up to 90%</td>
<td>3 to 5</td>
<td></td>
</tr>
<tr>
<td>Construction of new shipyard installations</td>
<td>Up to 2 years</td>
<td>Up to 10 years</td>
<td>Up to 90%</td>
<td>3 to 5</td>
<td></td>
</tr>
<tr>
<td>Construction or production of vessel destined to fluvial transport of passengers, of high social interest</td>
<td>Up to 4 years</td>
<td>Up to 20 years</td>
<td>Up to 100%</td>
<td>1 to 3</td>
<td></td>
</tr>
<tr>
<td>Projects for research and scientific or technological development and formation and improvement of human resources directed to Merchant Marine, construction or naval repair sectors</td>
<td>Up to 2 years</td>
<td>Up to 10 years</td>
<td>Up to 90%</td>
<td>1 to 3</td>
<td></td>
</tr>
<tr>
<td><strong>Public entities, research institutions and other agencies, including the class representatives of merchant marine and naval construction sectors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction of auxiliary, hydrographic and oceanographic vessels, in Brazilian shipyard</td>
<td>Up to 4 years</td>
<td>Up to 15 years</td>
<td>Up to 100%</td>
<td>3 to 5</td>
<td></td>
</tr>
<tr>
<td>Projects for research and scientific or technological development and formation and improvement of human resources directed to Merchant Marine, construction or naval repair sectors (inclusive of Brazilian private entities, including the class representatives of merchant marine and naval construction sectors)</td>
<td>Up to 2 years</td>
<td>Up to 10 years</td>
<td>Up to 90%</td>
<td>1 to 3</td>
<td></td>
</tr>
</tbody>
</table>
Role of Petrobras and Transpero

Petrobras is owned 55% by the Brazilian Government. Until 1997, Petrobras held monopoly over Brazilian oil production and was fully owned by the Government. In that year, monopoly rights were withdrawn and Petrobras was opened up to public share ownership with government remaining in the majority.

Petrobras is an integrated energy enterprise whose main activity areas are oil exploration and production, terminals & refining, marketing, transport and distribution, gas and power generation, and biofuels. While Petrobras is increasingly active in other continents, the main focus is on Brazilian and Latin American oil & energy markets, exploration and production. Brazil is the world's 8th largest consumer of oil and its demand for oil has been grown at 2.4% a year, faster rate than global demand over the last decade.

The Petrobras operations are vast – more than 100 production platforms, sixteen refineries, more than 6000 automotive fuel stations, over 40 gas fired and thermal power stations and three fertilizer plants. It operates a fleet of 154 tankers including 55 belonging to its Transport and Distribution subsidiary Transpetro. It ranks 4th in terms of proven global oil reserves (behind Exxon, BP and Royal Dutch Shell); 5th in terms of global oil & gas production (based on first 3 qtrs 2008 behind Exxon, BP, RDS and Chevron); and 6th in terms of global refinery capacity.

Petrobras boasts a strong emphasis on R&D, with 2007 R&D expenditure of more than US$0.8 billion, second only to Royal Dutch Shell among the global oil majors. This attention to R&D has paid off – Petrobras is now a world leader in very deep offshore oil production. Over two-thirds of Petrobras' exploration occurs in very deep offshore waters and Petrobras operations account for fully one quarter of global deepwater production. While 80% of crude production is in Campos basin, medium term and long term expansion is based mainly on the very deep pre-salt Espirito Santos reserves of light oil and gas.

Petrobras' oil production has accelerated over the past decade – at around 6% annual compound growth rate – while the production many larger oil companies has declined. In 2006, a new platform, PETROBRAS-50 (P-50), and three smaller platforms commenced operations in the Campos Basin. P-50 production has enabled Brazil to reach self sufficiency in oil, a Brazilian goal since the discovery of Campos Basin reserves in 1974. In the late 70s and early 80s domestic production was limited at around 200,000 bpd. Domestic production reached 1.8mbd in 2008. By 2020, domestic production of oil and gas is projected at around 5mbe/d. Oil production is projected to double to around 3.9mdb oil production.
Underpinning the expansion is a robust “project pipeline” - many projects are coming on line over next 5 years. There is over USD30Billion to be invested in the deepwater pre- salt fields to 2013 with six new production units coming on line. By 2013 production is estimated to be around 2.2 mb/d.

Transpetro, the Petrobras shipping and logistics subsidiary, stores and transports oil, bio-fuel and gas throughout Brazil. It processes approximately 15 million cubic meters of natural gas per day. It is the biggest shipping company in Latin America and a leader in fuel logistics. Each year it controls billions of litres of fuel flowing through 10000 km network of oil and gas pipelines, offshore and onshore terminals and a fleet of 54 oil tankers.

Transpetro’s fleet of tankers and support ships are used for a range of purposes including the transport of:

- Fuel and crude oil produced in various points of the Country including Campos Basin production to terminals and refineries along the Brazilian coast
- Diesel to support vessels in the Campos Basin
- Campos Basin production to offshore terminals
- Fuel oil to Argentina and the Caribbean; ethanol to Venezuela and gasoline to Africa.
- LPG from Argentina; automotive diesel oil from Europe and Latin America
- Oil derivatives and byproducts in coastal shipping between the refineries and major consumer centers along the Brazilian coast;
- Petrochemicals between terminals and centres not connected to terminals.

It follows that Transpetro maintains a significant presence in maritime cabotage stemming as a result of its fleet of offshore support vessels, and tankers delivering product to centres and terminals along the Brazilian coast.

Petrobras and local industry capacity

The Brazilian government has a policy goal of stimulating sustainable industry development. Purchasing policies of Petrobras play an important part in realizing these goals – especially in the case of maritime industry including shipbuilding and logistics. It is not surprising therefore that Petrobras strategy is strongly geared towards strengthening local content and industrial supply capacity.

The Petrobras business case for favouring local content is presented in its basic form in the 2009 - 2013 strategic plan as a set of diagrams showing a virtuous cycle being set up when local content is encouraged. Support for local content produces increases in the volume of local supply and the
It is difficult to overstate the role of Petrobras as an agent of development and government economic policy. It is the chief agency for achieving oil self sufficiency and providing some insulation against global oil market fluctuations. In its various roles as gas and thermal power producer, LNG producer, and provider of logistics and Bio-fuel, it is a key agent of Government energy policy. It is a major Brazilian employer of knowledge workers – employing over 200 PhDs and thousands of university graduates. It is a major tool for stimulating further investment and economic activity through a range of capital expenditure programs in energy production, refining and petrochemical product. Its massive shipbuilding contracts requiring 60-70% Brazilian content stimulate demand for Brazilian engineering, steel and maritime supply industries. Retaining work in Brazil has major benefits in terms of balance of trade, employment growth and tax returns to the Government.

Its major impact however is arguably through the Shipbuilding contracts it lets and the flow on effects to the economy arising from its commitments to Brazilian equipment supply and the chartering of Brazilian vessels. The current government is a strongly supports using cabotage, taxation policy and Petrobras purchasing policies to strengthen shipbuilding and broader industry capacity. Transpetro, Petrobras’ shipping and logistics subsidiary is critically important to the development of maritime industry. The key role of Petrobras and Transpetro in realizing Governments maritime industry policy is reflected in the appointment of Sergio Machado, former head of the ruling Social Democratic Party in the Senate, as the President of Transpetro.

Petrobras and its shipping subsidiary directly feed the growth of maritime industry in Brazil as a consequence of:

- commitment to local production and purchasing
- alignment of Petrobras capex with government programs and policies
- rapidly growing oil production in deep sea reserves feeds an increasing demand for more submersible platforms, rigs, tankers and the modernization of the existing fleet of tankers
rapidly growing oil production in remote deep sea localities combines with growing Brazilian consumption of oil to feed The demand for offshore supply vessels, tugboats, anchor handlers, FSPOs, platforms & rigs and coastal tankers provides a stimulus to both shipbuilding and the cabotage trade.

Petrobras has outlined a major new program of orders to be placed over the next six years which will continue to shore up the resurgence in Brazil’s maritime industries. The details of this program are outlined below.

**Petrobras fleet renewal and expansion**

Petrobras has a policy of modernizing its maritime support fleet and has released Four Fleet Modernisation Plans over the past 5 years. In mid 2008, the Brazilian President launched the USD 5 Billion Petrobras Fleet and Support Vessel Modernization and Expansion Program. This program involved the chartering of 146 new vessels supporting Petrobras’ offshore exploratory and production activities. According to Petrobras “54 (vessels) will be used to handle very large anchors, 64 for supply activities, 18 for oil collection operations while 10 are tugboats” The first tender is underway for 24 vessels. At the same time, Petrobras also announced intentions to contract more 40 drilling vessels, semi-submersible drilling platforms, and large vessels to be constructed by 2017, with a priority given to Brazilian construction.

The initiative addresses the goals of Petrobras’ Third Maritime Support Fleet Renewal Plan. It is also closely associated with two of the government’s main economic policies and programs: the Program for the Mobilization of the National Oil and Natural Gas; and the Productive Development Plan. Over its lifetime the initiative is expected to create around 70,000 ship building jobs and a further 3,800 for crew members. Chartering agreements will only allow Brazilian nationals to crew the vessels. It is also a contractual obligation that the new fleet must have 70% to 80% Brazilian content, depending on the type of vessel.

The First Fleet Modernization Plan commenced in 2003 when twenty vessels were upgraded. The Second Plan commenced a year later and involved 38 new vessels. Seven of these are already operational and another 17 are being built. Petrobras also intends to contract 40 drilling vessels and semi-submersible drilling platforms to operate in deep and ultra-deep waters. The plan calls for the construction and delivery of these new units by 2017 with priority given to Brazilian construction.

Petrobras signed an MOU last year with Noroil Empresa de Navegação to analyze the viability of future chartering agreements for two very large crude carriers to be built in Brazil, each with a capacity of 300,000t each. To meet the growing logistics demands involved in moving the
increasing volumes of Petrobras production, the company plans to contract 19 extra vessels under chartering agreements with Brazilian riggers.

At the same time Transpetro, the Petrobras subsidiary, also announced the second stage of the **Program for the Modernization of the Oil Tanker Fleet (Promef)**. Promef II is an extension of Promef I which commenced in 2005 involving Brazilian shipyards in bids for the construction of 26 new Transpetro oil tankers. The aim of Promef is to modernize and replace older single hull vessels as its fleet of 54 tankers currently has an average age of 17 years. The new replacements will all be double hulled and comply with international treaties.

Promef is an integral part of the Federal Governments **Growth Acceleration Plan (PAC)**. Promef I and II are designed to:

- Give Petrobras higher levels of autonomy and control over shipping of product.
- Support the resurgence of Brazilian maritime, associated engineering and supply industries including steel, chemicals and electrical equipment.

In Promef I, 26 new ships are to be constructed with a total capacity of around 2.7 million tons gross deadweight (DWT). In 2007 and 2008 there was a total of over USD 3 Billion awarded to three Brazilian shipyards: Atlantico Sul; Eisa, and Maua. Promef I is expected to generate 20,000 jobs. The ships will be constructed in Brazil. Tenders must be competitive internationally with 65% of inputs sourced within Brazil.

Promef II calls for 22 new ships, plus a gas carrier already in construction at Itaji. The new ships will service expanding Santos deep water fields and must be locally constructed with 70% Brazilian content. The build program will consume one quarter of a billion tonnes of Brazilian steel; generate sixteen thousand jobs until 2015; and, improve Brazil’s balance of payments by US$290 million per year. Four Brazilian shipyards have presented bids for the first round of tenders.
Case Studies

2 Australia

Cabotage in Australia is governed by the Australian **Navigation Act 1912**. A unique feature of the Australian legislation is that licences are not restricted to Australian flagged, owned or crewed vessels. Both Australian and foreign-flagged vessels are required to obtain a license to operate in Australia’s coastal shipping.

Cabotage is restricted to the carriage of domestic cargoes and passengers.

To obtain a licence, operators are required to pay crew at least according to going Australian rates while the vessel is engaged in coastal shipping in Australia, and the vessels must not be receiving subsidies from foreign governments. Cabotage laws generally only apply to interstate shipping – although there are exceptions to this.

Other key features of the Navigation Act:

- Cruise liner passenger trades are exempt from the coasting trade requirements of the Act, other than those between Victoria and Tasmania.
- No license required to carry cargo or passengers to or from Offshore anchorage points or loading facilities outside State or Territory Coastal Waters.
- No license required for carriage of cargoes or passengers between the mainland and certain territories: Christmas Island, Norfolk Island, Cocos (Keeling) Islands.
- Passenger cruise liners operating in coastal passenger trades other than those between Victoria and Tasmania.
- Licences are renewable annually.
- Licences are not restricted to Australian flagged, owned or crewed vessels.
- All foreign nationals engaged as crew must comply fully with Australia’s immigration regime.
- All foreign vessels must comply fully with Australian Customs regulations.
Licensed Cabotage Fleet

As of April 2009, there are 21 operators of 54 licensed ships. Table 10 below provides summary of licensed ships by type. Thirty percent of all licensed ships are bulk carriers accounting for just over half of aggregate tonnage (GRT).

<table>
<thead>
<tr>
<th>Type of Vessel</th>
<th>Vessels</th>
<th>GRT</th>
<th>Operators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk Carrier</td>
<td>17</td>
<td>653054</td>
<td>6</td>
</tr>
<tr>
<td>Container Ship</td>
<td>9</td>
<td>206915</td>
<td>8</td>
</tr>
<tr>
<td>Oil Tanker</td>
<td>6</td>
<td>191395</td>
<td>3</td>
</tr>
<tr>
<td>Ro Ro Passenger Ship</td>
<td>7</td>
<td>62421</td>
<td>4</td>
</tr>
<tr>
<td>Ro Ro Cargo Ship</td>
<td>6</td>
<td>61762</td>
<td>4</td>
</tr>
<tr>
<td>Chemical Tankship</td>
<td>2</td>
<td>35363</td>
<td>2</td>
</tr>
<tr>
<td>General Dry Cargo</td>
<td>2</td>
<td>7645</td>
<td>2</td>
</tr>
<tr>
<td>Special Purpose Ship</td>
<td>1</td>
<td>6574</td>
<td>1</td>
</tr>
<tr>
<td>Supply Ship</td>
<td>1</td>
<td>2065</td>
<td>1</td>
</tr>
<tr>
<td>High Speed Cargo Craft</td>
<td>3</td>
<td>1038</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>54</strong></td>
<td><strong>1228232</strong></td>
<td><strong>18</strong></td>
</tr>
</tbody>
</table>

Source: Aggregated from Data on Current Licenses accessed from Infrastructure Australia Website

Lack of Integration with National Policy Goals

The Navigation Act has no stated objectives or reference to national priorities – although it addresses a range of issues. The relative lack of integration with broader national policy goals has given rise to a great deal of discussion and debate about shipping policy in Australia.

An incoming Labor government has committed itself to strengthening coastal shipping. An independent inquiry for the ASA headed by two former ministers for shipping recommended a tonnage tax and other measures to strengthen shipping. A parliamentary enquiry in coastal shipping has published a report making various recommendations and referring to broader policy goals such as defence support and achieving a modal shift to coastal cargo shipping on environmental grounds. However, these recommendations and discussion papers are only small steps along a long road towards an integrated national policy framework in which cabotage plays a role in Australia. For the time being, Australia’s cabotage system is hanging in the breeze, disconnected from any major policy goals other than ensuring wage justice for seafarers employed on licensed ships plying the Australian coastal trade.

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4 Some operators have ships in more than one category so this column does not total
Conditions of Permits

In Australia, the minister for transport may issue temporary permits for ships (without licenses for cabotage) to engage in coasting trade. Licenses may be granted where:

- no licensed ship is available; or
- that the service as carried out by the licensed ships is inadequate; and,
- the Minister is satisfied that it is in the public interest to do so.

Once an application for a permit is received, the Transport Department checks with all relevant licensed ship operators, unions, industry and professional organisations in order to determine if any suitable licensed ships are available. Delivery requirements are taken into account in determining availability – cargo should be delivered in “a timely, sound and uncontaminated condition” A licensed ship must be able to meet any supply, production or service obligations specified in the application for the use of non licensed ship. The schedule for cargo delivery should meet the “reasonable needs of the shipper”. Availability depends on the cargo being able to be shipped three days either side of the date set out in the application. The existence of any contractual arrangements giving other shippers priority may also lead to the licensed vessel being deemed unavailable. The definition of adequacy of service turns on the suitability of the vessel with respect to “the reasonable delivery requirements of the shipper, the carrier's ability to supply necessary equipment (eg containers or bolsters), technical characteristics of the ship in question and capacity of the ship to transport cargo safely”. The licensed ship must also be available “on reasonable commercial terms.” The definition of public interest includes reference to maritime safety requirements and “risk to Australia’s marine environment”.

Single Voyage Permits (SVPs) are granted where a suitable licensed ship s unavailable on a one-off basis. An SVP is issued for a specific vessel, cargo, journey between ports, loading and sailing schedule. Continuing Voyage Permits (CVPs) are granted when suitable licensed ships are unavailable over an extended period. They can be issued for periods of up to 3 months and must comply with Australian customs, quarantine and immigration requirements.

Relaxation of Cabotage

Since the very early 1990s there has been a relaxing of administrative guidelines specifying under which conditions permits could be granted. This process gathered pace under the conservative Government in power between 1996 and 2007. The liberalization of cabotage arrangements was part of a broader policy framework of a government which failed to recognize any strategic role for Australian shipping. This policy orientation stemmed from the perception of Australia, by the government of the day, as a “purchaser of shipping services”. As such, it opposed any financial
assistance or programmatic support to shipping and undertook a number of measures which undermined Australian shipping (both international and coastal) including the abolition of capital grants and accelerated depreciation for ship purchases.

In 2003, the Australian Shipowners Association commissioned an Independent Review of Australian Shipping prepared by two former Federal Ministers of Transport. The review reported finding “overwhelming evidence that over the past few years the criteria [for issuing permits] have been administered in such a way that the coastal trade could now be regarded as virtually deregulated.”

The government’s position was articulated clearly in March 1999, when the then Minister for Transport and Regional Services, summarised the Governments policy towards shipping:

“Key among this Governments shipping policies have been privatisation of the Government-owned shipping line………..the removal of ad hoc support measures for shipping which did not contribute to the development of an efficient fleet, the winding back of cabotage, an end to outdated industry employment practices on vessels, and the modernisation of shipping legislation”

After 1997, the tonnages carried by ships under permits increased dramatically as the Government undermined domestic cabotage by increasing the number of SVPs and CVPs. In 1996/7, cargo transported under permits accounted for just under 10% of coastal trade measured in total tonnage. By 2006/7, the share total tonnage carried by permit ships had lifted to around 30% (see Graph 1 below). Over the decade, permit tonnages increased fourfold from around 4 million tonnes to 16 million tonnes, while total tonnage grew very modestly from around 50 million to 56 million tones.

An increasing number of ships operate with temporary permits and enjoy significant competitive advantages over the licensed coastal ships. The 2003 independent enquiry into Australian Shipping summed up very neatly the range of market factors undermining the cabotage trade and the capacity of Australian licensed operators to compete with foreign ships operating under temporary permits:

“The interaction of a number of different pieces of legislation causes a competitive disadvantage to Australian operators whose ships operate permanently on coastal trades compared to the less onerous regulatory environment applicable to foreign vessels that work on the coast under permits. ……………The impact has been exacerbated by ad hoc steps taken to liberalise the coastal shipping market for non-Australian operators without taking into account the competitive disadvantage imposed on Australian operators. Such vessels are not burdened by the Australian tax system, employment conditions and employee costs. The permit system is administered within guidelines that have anti-competitive consequences. There are also wide social policy questions such as the ability of foreign labour to work in foreign vessels in an Australian domestic industry
for extended periods. There is no doubt that foreign operators intent on utilising such a provision will retain foreign labour in the Australian domestic transport industry for as long as they are allowed to. The provisions of the Navigation Act 1912 that regulate the conduct of coastal shipping should be reviewed. The review should have regard to transport, customs, immigration, taxation, workplace relations, competition and other relevant policy considerations.”
Case Studies

3 Canada

3.1 Domestic Shipping Profile

Canada has a very diverse domestic shipping profile. Four main domestic shipping regions:

- West Coast (Pacific)
- East Coast
- Arctic
- Great Lakes/St Lawrence River Seaway

**West Coast** shipping fall into one of two categories: Passenger ferries or specialised tug/barge operations carrying mainly timber and construction products. **East Coast** shipping movements covers container cargoes (including feeder services); bulk and liquid products such as petroleum and coal; passenger ferries; and offshore support vessels for oil E&P. **Arctic** shipping is seasonal engaged in supplying remote communities, oil E&P minerals and oil exploration and production. **The Great Lakes/St. Lawrence River Seaway** largely involves bulk carriers engaged in movements of products such as grain, coal, iron ore, cement, and limestone. Ships in the Canadian coasting trades are also involved in international cross lake movements.

**Table 8** presents a profile of all Canadian registered vessels operating in Canadian Waters in 2009 greater than 1000 GRT by vessel type. The profile was generated from the Canadian Vessel information system. Note that a significant number of smaller barges, commercial passenger and sailing vessels are registered and less than 1000GRT.

It is worth noting that Canada ranks 13th in the world in terms of total controlled shipping tonnage as at January 1 2008. Canadian controlled shipping totaled just under 18750000 DWT, 88% of which was registered under a foreign flag. According to UNCTAD, Canadian interests control over 213 foreign flagged vessels totaling 16 400 000 DWT and Canadian flagged vessels accounted for approximately 2 350 000 DWT in 2008. A comparison of Canadian Transport Agency Vessel Information Data and the UNCTAD data suggests that most, if not all of the Canadian flagged vessels are engaged in domestic shipping only.

Cargo Vessels and large Barges account for about two thirds of Canadian Registered Vessel tonnages and Oil Tankers and Tank barges account for about one quarter. Dry Bulk Carriers accounted for
roughly a third of all Canadian Vessels and almost one half of Canadian registered tonnage in 2005. These are mainly operate in the Great Lakes/St Lawrence Seaway and includes the many self unloading bulk carriers so distinctive of the region.

<table>
<thead>
<tr>
<th>Table 8 Canadian registered vessels in operation in Canadian waters (&gt;1000 GRT)</th>
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</thead>
<tbody>
<tr>
<td>Vessel Type</td>
</tr>
<tr>
<td>Research and survey vessels</td>
</tr>
<tr>
<td>Dredges</td>
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<tr>
<td>Tugs and offshore supply vessels</td>
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<tr>
<td><strong>East coast, St. Lawrence, Great Lakes</strong></td>
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<tr>
<td>Ferries - East coast, St. Lawrence, Great Lakes (roll-on/roll-off)</td>
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<tr>
<td>Passenger-cruise vessels (night berths)</td>
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<tr>
<td>Hydrofoil and passenger vessels</td>
</tr>
<tr>
<td>Passenger Vessels</td>
</tr>
<tr>
<td>Cargo vessels</td>
</tr>
<tr>
<td>Cargo barges - Pacific</td>
</tr>
<tr>
<td>Barges (self-propelled)</td>
</tr>
<tr>
<td><strong>Cargo Vessels &amp; Barges</strong></td>
</tr>
<tr>
<td>Tank Barges - Pacific</td>
</tr>
<tr>
<td>Small Tanker and Tank Barge</td>
</tr>
<tr>
<td><strong>East Coast, Great Lakes &amp; St. Lawrence</strong></td>
</tr>
<tr>
<td>Large Tankers - 35000 GRT and over</td>
</tr>
<tr>
<td><strong>Tankers and Tank Barges</strong></td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Source: Canadian Vessel Information System (Accessed April 2009) - Canadian Transport Agency

3.2 Cabotage Regime

The **Canadian Coasting Trade Act** governs Canadian cabotage and was introduced in 1992 after a number of enquiries and lengthy investigations into shipping law that spanned the previous 20 years.

The new Canadian Coasting Trade Act removed the concept of a ‘British Ship” and reserved the Canadian coasting trade to “duty paid” Canadian flagged and crewed vessels except in cases where there are no suitable and/or available Canadian ships to carry out the activity. The duty was a tariff of 25% payable on imported vessels. The duty is not payable on ships manufactured in countries with which Canada has negotiated Free trade agreements such as members of NAFTA, Turkey and Korea.
Coverage

The Coasting Trade is regulated by the Canadian Transport Agency in accordance with the Coasting Trade Act 1992. The coasting trade is defined as the movement of goods or persons from one point in Canada to another point in Canada either directly or indirectly (including via a point outside Canada). The Act also reserves any other marine activity of a commercial nature, to Canadian registered duty-paid ships, including activities related to the exploration, exploitation, and transportation of non-living natural resources in the waters above the continental shelf. This means the Act also covers includes a variety of tasks where point to point cargoes are not involved such as scientific research, seismic and geotechnical surveying, diving, dredging, cable laying, towing, drilling and a broad range offshore support activities such as anchor and line handling, associated with oil production and exploration.

Temporary Licences

Under Canada’s Coasting Trade Act, a coasting trade licence issued by the Canada Border Services Agency is required to operate a foreign registered or a non-duty paid Canadian registered vessel in the coasting trade. The Canadian Transportation Agency decides whether a suitable Canadian vessel(s) is available. In the case of passenger vessels, the CTA decides if a similar (and adequate) Canadian operated service is available.

The process of gaining authorization to use a foreign registered vessel (or a non-duty paid Canadian vessel) in the Canadian coasting trade involves the following steps:

- Application is made to the Canada Border Services Agency (CBSA) for authorization to bring the vessel into Canadian waters for a specific activity.
- A copy of the application is submitted to the CTA.
- CTA issues a request for offers of Canadian vessels to ship owners and operators in the region where the activity is to take place. Offers must be filed by a specified date. The applicant can comment on any offer received.
- If no offers of Canadian vessels are received, the Agency advises CBSA which then issues a letter of authorization to the applicant to use the foreign registered vessel in Canadian waters.
- If offers of Canadian vessels are made, the Agency assesses whether the vessels are suitable and available. The Agency examines economic, technical and commercial aspects of the use of Canadian vessels versus the use of the foreign registered vessel. Once this assessment has been completed, the Agency makes a ruling and advises CBSA whether or not suitable...
Canadian vessels are available. The CBSA then issues an authorization or refusal to use the foreign registered vessel.

Details of CTA rulings are available on the internet. In the six years between 2003 – 2008 inclusive, the CTA made just over 200 rulings on licence applications for foreign vessels. One quarter of these rulings were made in 2008.

In 2008, almost three quarters of all temporary licence applications were for oil and asphalt tankers, offshore support vessels, mobile offshore drilling units and geotechnical survey and seismic research vessels associated with oil exploration, production and distribution. Much of this is due to activities in the West Atlantic fields on the Canadian Continental Shelf.

Almost half of all license applications were for use of foreign oil and asphalt tankers operating out of the Newfoundland and New Brunswick terminals. A further ten percent of license applications related to specialist optic cable laying vessels operating off Canada’s east coast.

Between 2003 and 2008 inclusive, just 10 temporary license applications out of 200 were rejected because suitable Canadian ships were available. The types of vessels involved in these applications were oil tankers, bulk salt carriers, seismic research, dredging and cable laying vessels.

Another 10 applications were granted after rejection of claims by Canadian shipping firms to have suitable ships available. According to union sources, many applications are withdrawn during this process when information on availability of a Canadian ship is uncovered during the course of the investigation.

On the East Coast of Canada, the SIU is very active in monitoring license applications. In 2007, it was very active in opposing a permit to a Dutch base Ro-Ro vessel providing short sea shipping services from Halifax up the St Lawrence Seaway in competition with truck transport. The union identified that many of the cargoes the boat was to carry did not require a specialist RoRo vessel and Canadian vessels were available to ship them. Subsequently, the Union was successful in obtaining full coverage of all ratings on the vessel.

The data on licenses suggests that Canadian registered vessels are capable of delivering on most of the domestic sea freight task. The traditional activities on the West Coast and Great Lakes are served almost fully by Canadian flagged vessels. The areas where Canadian registered shipping has not been able to adequately cover has been in supply of tankers, scientific vessels, offshore submarine cable laying vessels and specialist offshore support vessels for the oil industry. Most of these activities occur around Canada’s East Coast.
25% Tariff

Unlike the taxes charged on freight in Brazil, the tariffs collected are not directed to any specialist shipbuilding fund – they simply go straight to consolidated revenue. The tariff is a defensive, fund raising measure that goes some way towards protecting domestic ship repair facilities and certain limited building capacity, but it is certainly not part of any broader and more comprehensive national policies aimed at develop shipbuilding and related maritime supply industries.

The SIU Canada Leadership\(^5\) has been vocal in calling for more innovative support for Canadian Shipbuilding. SIU of Canada President Roman Gralewicz has criticized the Canadian government for not directly supporting ship building. In AFL-CIO web site news pages referring to the 25 percent tariff on the importation of vessels Gralewicz observed “(the federal government) makes Canadian shipping companies pay for the lack of a sound shipbuilding policy.”

A recent strategic document released by the ITF and backed by all Canadian Maritime unions has called for more direct and innovative approach to developing ship building and repair capacities in Canada.

Case Studies

4 Indonesia

Covering a sea area of almost 8 million square kilometers and comprising 17,000 islands, Indonesia is the largest archipelago in the world. The strategic and economic importance of sea transport and maritime industry is difficult to understate - Indonesia depends on sea transport not only for international trade but for much of it’s inter island domestic cargo as well.

For several decades, the Indonesian Government has relied in part on cabotage laws for the development of domestic shipping. The shipping Laws of 1988 reserved coastal shipping for Indonesian-flag vessels and stipulated that ships were to be crewed by Indonesians. Some subsidies were available for ships constructed in Indonesian shipyards for the cabotage trade and also for certain inter-island shipping. Foreign investment inter island shipping was allowed - in the form of joint ventures with Indonesian companies. Foreign share in any joint venture could be as high as 95%. Shipping Lines were allowed to use foreign flag vessels when local tonnage was not available.

These laws proved ineffective in practice and were inconsistently applied. Furthermore, they operated in a context where over 140 ports were open to foreign shipping and up to 95% direct foreign investment was allowed in shipping joint ventures. Exemptions were easily obtained allowing the chartering of foreign ships when local vessels were not available. While cabotage effective in covering container cargoes and timber it was less effective in relation to a wide range of agricultural products as well as liquid and bulk commodities such as oil and coal.

2005 Presidential Decree

In 2005, Susilo Bambang Yudhoyono issued Presidential instruction number 5 of 2005 with the intent of strengthening Indonesian shipping. The Decree called for a stricter and more uniformly applied form of national cabotage. By 2010, all cabotage trade is to be carried by Indonesian flagged vessels. A timetable for the application of cabotage to various commodities was announced incorporating rice, sugar, crude palm oil, wood, fertilizer, cement, vegetables and fruit, corn, soybeans, coal, oil and gas by 2009. Cabotage for containers was already achieved prior to 2005.

After the 2005 Policy Decree all but 21 of these ports were closed to foreign flagged vessels.
The 2005 Decree was directed to thirteen ministers of the Indonesian government, state governors and mayors. It called on them to implement the cabotage framework consistently. The decree was not just about cabotage. It represented a whole of government approach to the transformation of Indonesian shipping and ports after decades of underdevelopment and the failure of previous policy regimes and systems of cabotage.

The decree required policy innovation and coordinated action across many areas of government as well as support from private sector, notably financial institutes and shippers themselves. The Coordinating Minister for the Economy was given responsibility for ensuring the decree was implemented with co-operation of Local and state government and the national portfolios of National development Planning, Transportation, Homeland, Industry, Commerce, Forestry, Education, Energy and Mineral Resources, Marine and Fisheries, State Enterprise, Co-operatives and Medium Enterprises.

The Presidential Decree outlined an integrated framework for future shipping policy in Indonesia.

The main areas addressed by the decree were:

**Cabotage and Import Cargo reservation**
- all domestic shipping to be carried by Indonesian flagged vessels and operated by Indonesian shipping companies
- all imports of government goods and services are to be carried by Indonesian Flagged vessels

**Taxation Policy (to promote investment in shipping and shipyards)**
- Restructure and improve tax policies to promote investment in ships and shipyards

**Financial Institutions & insurance**
- Encourage financial institutions (banking and non banking) to actively support the financing of maritime industry.
- Develop financial schemes that support national fleet growth
- Insure that all ships have adequate insurance – cargo hull & maintenance.

**Sea transport**
- All domestic sea transportation by national flagged ships
- New simpler processes for reflagging foreign vessels as Indonesian vessels
- Incentives for fixed and regular routes
- Dispensation of port call and bunker service fees
- Accelerate signing of international conventions on Maritime Liens and Mortgages and Arrest of ship
- Accelerate expansion of information forums and transparency on cargos, shipping capacity

**Port**
- Restructuring of Port Operations and development of port infrastructure and facilities
- Develop port management functions, separating regulator and operator functions
- Encourage Inter terminal shipping competition
- Restructuring to expand capacity of ports to handle exports
- Restructure of port service to enable expansion of port capacities

**Industry**
Support growth & development of shipping industry
- Establish Ship Design Centre
- Develop Standards for Indonesian design and construction
- Develop raw material inputs to ship building and ship component industries
- Mechanisms and incentives for technology transfer and use of Indonesian ship yards for construction and repair
- Maximise local content in shipbuilding by application of national, state and local government procurement policy

**Energy & Minerals**
- Secure supply of fuels to national flagged vessels

**Training & Education**
- Encourage Local Govt/Private Industry to develop centres for Maritime Education conforming to International Standards (IMO)
- Develop co-operation between education providers, shipping service users to extend use and recognition of IMO standards

**2008 Shipping Law**

Almost 3 years after the Presidential decree of 2005, a new Indonesian Shipping Law was passed in April 2008. This new and comprehensive Shipping Law gave legislative substance to many of the policy objectives in the President’s 2005 decree. It covered a wide range of areas including navigation, environmental protection, sailor welfare, maritime accidents, human resource, the creation of a coast guard, cabotage, port restructuring, financial laws covering the use of ships as collateral for bank loans.
The Law enforced the new cabotage requirements to be fully operational in 2011. Importantly it dealt with two areas of deficiency denying the full benefits of cabotage to Indonesian shipping: inadequate port infrastructure and an unwillingness by Indonesian banks to make capital available for new ship builds. In 2008 the investment required in new Shipping as a consequence of new cabotage laws was estimated to be about Rp 34 trillion. Indonesian shippers have reported difficulty obtaining the necessary loans for the expansion of the Indonesian flagged fleet with foreign flagged vessels still accounting for 35% of domestic shipping.

The new law will decentralize the power over port management currently in the hands of four port management companies owned by the Indonesian government at the time of the Law’s enactment. It allows private investment in new port infrastructure. The government intends transforming publicly owned and operated ports into Landlord ports with the regulatory and privatized operational functions separated. ASEAN based investors are reportedly allowed to have up to 51% of capital in shipping and port operators providing a reciprocal offer from the investor’s country of origin is made, and the foreign investor complies with the cabotage principles. Joint venture shipping companies must still fly the Indonesian flag with Indonesian crew in order if they want to operate in the country, but level of allowable overseas capital has been reduced from 95% to 51% and only ASEAN based companies are eligible for a controlling interest.

Cabotage changes since the Presidential decree of 2005 (which foreshadowed the 2008 Law) have led to an increase in Indonesian shipping and the reflagging of a proportion of foreign vessels.

Nevertheless, despite these improvements, Indonesian flagged vessels still carried slightly less than two thirds of domestic shipping by the end of 2007. Authorities have estimated that the Indonesian fleet will have to grow in number by more than 650 additional vessels at a cost around US $4.6 Billion if objectives of the legislation are to be realized. Senior union officials have criticized shippers for disregarding the new laws and continuing to charter foreign vessels.

The new Shipping Law intends to make bank loans more likely for new ships by enabling an existing ship to be used as collateral for loans. The international financial crisis has however made it very difficult to obtain credit for ship building. On the other hand, there is a looming global oversupply in many kinds of shipping - including bulk carriers - which may make ships more affordable.

The success or otherwise of the new Indonesian laws cannot be judged for at least another 5 years. In the meantime, Indonesia continues to operate a “very open” regime where around one third of domestic shipping task is undertaken by chartered foreign vessels. This is likely to change if Indonesia is successful in getting most of the tonnages of domestically traded coal and oil transported by Indonesian flagged vessels.
Case Studies

5 United States of America

Five pieces of legislation in the USA contain the basis of maritime cabotage in the USA:

- Jones Act Section (Section 27 of Merchant Marine Act 1920)

The main legislation is the Merchant Marine Act 1920. Although cabotage in some form has governed maritime transport for over two centuries, in 1920, build documentation and ownership requirements were consolidated in Section 27 of Merchant Marine Act (Jones Act)


The so called “Jones Fleet” refers to the vessels covered by these five pieces of legislation. Table 9 below sets out the composition of the Jones Fleet in 2005. The majority of the fleet consists of dry bulk barges under 1000 GRT, but the fleet also comprises a substantial number of container, roll-on/roll-off, dry bulk, offshore support, passenger, cruise & ferry and liquid bulk carrying vessels.

<table>
<thead>
<tr>
<th>Table 9 Jones Act Fleet (2005) by Vessel Type</th>
</tr>
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<tbody>
<tr>
<td><strong>SELF PROPELLED</strong></td>
</tr>
<tr>
<td>Towboat</td>
</tr>
<tr>
<td>Tanker</td>
</tr>
<tr>
<td>Offshore Support</td>
</tr>
<tr>
<td>Passenger</td>
</tr>
<tr>
<td>Dry Cargo</td>
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<tr>
<td></td>
</tr>
</tbody>
</table>

Source: MCTF, US MARAD
Basic Requirements & Principles

There are three important principles:

- 75% US equity (US ownership)
- US Registered and Flagged
- US Built & Maintained

Crewing requirements are triggered by ship registration and documentation laws requiring all crew to carry US licenses and 75% to be US citizens.

Main Objectives

Paragraph 861 of Section 27 of the Merchant Marine Act 1920 (Jones Act) explicitly outlines the national goals that the Jones Act addresses:

§ 861. Purpose and policy of United States

“It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.”

Section 27, Merchant Marine Act, 1920

Here, legislators leave no room for doubt that the primary objectives of US maritime cabotage are the creation of a naval auxiliary and the development of a well equipped merchant marine capable of carrying “the greater portion of its commerce”.

The Jones Act addresses these primary policy goals by reserving domestic cargoes for ships which are registered and built in the USA, operated by US corporations (with no more than 25% foreign equity) and whose crewed mostly by citizens of the USA (75%). Under the Act, only USA
shipbuilders can supply ships for the cabotage trade - foreign-built vessels cannot be sold or leased for use in US cabotage trade. The USA has been exempted from GATT rules for this legislative provision.

**Supporting Acts**

A number of other acts and regulations support the Jones Act fleet and the primary goals of the Jones Act. This leads to a strongly “intertwined” and mutually reinforcing set of policies and regulations. This reflects the fact that US legislators have held firm to the original policy intent for almost 90 years. Other main programmes and measures supporting the naval reserve status and general capabilities of the Jones Fleet include: Maritime Security Program, Voluntary Intermodal Sealift Agreement (VISA) program, Food Security Act, Ocean Freight Differential Program, tax benefits to ship leasers constructing ships in USA, and direct funding support to ship operators and shipbuilders from MARAD.


The Voluntary Intermodal Sealift Agreement (VISA) program ensures access to commercial shipping during war or national emergencies. In 2007, 125 ships were enrolled in the VISA programme – more than three quarters of these ships being subsidised through the Maritime Security Programs. The policy hook is that ships participating in VISA get priority for Department of Defence freight contracts.

The Food Security Act of 1985 requires that at least 75% of agricultural cargo under US DA and USAID overseas aid programmes are carried by US flagged vessels. Under the Ocean Freight Differential program, MARAD reimburses the USDA and USAID for the cost difference involved in using US flagged ships to carry more than half of the USA’s public food-aid abroad. The Food Security Act also enables further reimbursement to the USDA if the total costs incurred by the USDA for ocean freight and OFD exceed 20% of the export value of the commodities exported.

**A Closed Cabotage System**

In the USA, there are a limited range of conditions under which waivers are available. In recent times, this has occurred only during National emergencies such as Hurricane Rita and Katrina. In these cases the President waived the Act to enable transport of energy cargoes. However, the pro cabotage lobby successfully demonstrated that US Jones Act Fleet ships were available and ready for
service and subsequently protocols have been developed with DOE and marine administrators to ensure that such waivers are not issued in the future if Jones Act ships are available. Consequently, when oil production in the gulf was again interrupted by extreme weather in 2008, no waivers were issued. There are also some special cases involving transport to and from overseas US territories - these are listed in Table 4 below.

**Marine Cabotage Task Force**

USA is unique in that there is a formally constituted industry coalition whose objective is to promote the Jones Act and other US maritime cabotage laws that underpin a successful unsubsidized domestic fleet built on US ownership, construction and crews. This coalition, the Marine Cabotage Task Force was initially formed in 1995 in response to the very organised and active lobby of the Jones Act Reform Coalition (JARC) in the 1990s. The Task Force boasts over 400 members representing vessel owners and operators, seafarer and docker labor unions, shipbuilding and ship repair yards, marine equipment manufacturers and vendors, trade associations, dredging and marine construction contractors, pro-defense groups as well as companies in other modes of domestic transportation. The executive of the MCTF includes representatives of various regional shipping companies and waterways operators; Industry associations and institutes; AFL-CIO; Dredging Contractors; Shipbuilders Council of America; as well as several large domestic shipping companies.

At the time of the formation of the MCTF, the JARC was mounting a well financed campaign aimed at watering down USA’s maritime laws. In response to the JARC campaign, the MCTF set about prosecuting an “extensive campaign to educate the Congress, the media, and the public of the importance of the cabotage laws to national and economic security”. During the campaign, the MCTF was instrumental in ensuring that successive attempts to enact anti-cabotage legislation failed. MCTF lobbying was so successful that in 1998 a majority of the House of Representatives signed off on a bipartisan, pro-Jones Act resolution (H. Con. Res 65) soon after the JARC disbanded.

Since then, the MCTF has continued to engage in a professional education campaign to ensure that Congress, State and federal administrators, the Department of Defence, the media and the public at large is well appraised of the intent and operation of the Jones Act. The MCTF has been successful in:

- Tightening lease financing regulations to ensure that foreign finance firms do not directly operate vessels in the coastal trade successfully lobbied to have a loophole closed in new lease financing regulations that appeared to allow foreign investors to participate as operators in US cabotage trade. The loophole was shown up be the activities of an Australian

- Achieving a system where any temporary waivers will be considered only after the U.S. Maritime Administration determines that there are no US flagged vessels available. MCTF was forced to take action when the Bush Administration waived the law to allow movement of energy cargoes in the aftermath of Hurricanes Katrina and Rita. The MCTF undertook an extensive education program amongst Federal agencies, establishing that sufficient US flagged ships had been available to ship energy cargoes at the time. Largely as a consequence of these actions, no waivers were issued when energy production was again disrupted by storms in 2008.

The box below is extracted from the MCTF website and summarises the main activities and successes of the Task Force between 1995 and the present day.
US Maritime Cabotage Task Force Track Record
*(an edited extract from MCTF web site)*

**Campaigning for the Industry**
- Played a key role in securing the 2000 Bush/Cheney campaign statement in support of the Jones Act. The Bush/Cheney campaign reiterated its support in 2004.

**Working with the Executive Branch**
- Educated the Department of Defense (DOD) on the national security role played by the domestic fleet for vessels, manpower, and infrastructure through its reports. Gained public support from DOD for cabotage laws.
- Worked to block a request from the Government of Panama to alter a broad range of U.S. cabotage requirements through a free trade agreement.
- Cooperated with the U.S. Maritime Administration to change the way it counts the U.S.-flag fleet, eliminating opponents’ ability to distort the number of self-propelled vessels as evidence of the failure of the Jones Act.
- Neutralized anti-Jones Act findings of the U.S. International Trade Commission’s bi-annual reports on restraints on imported services.
- Encouraged the U.S. Coast Guard to undertake a rulemaking on the issue of vessel lease financing as a major step toward closing this loophole in the ownership provision of the cabotage laws.

**Demonstrating Organizational Strength**
- Established MCTF as a force to be reckoned with on issues of domestic marine transportation.
- Developed the most comprehensive resource base on the Jones Act and cabotage through both an internal resource library and a web site.
- Created a positive environment for the future of the Jones Act, thereby fostering the climate necessary to encourage billions of dollars in new vessel construction for operation in the Jones Act trades.
- Served as an active voice in support of the U.S.-flag domestic fleet and cabotage on the Hill and in public forums across the country through numerous appearances before congressional committees and through an active, nationwide speaker’s bureau.
- Provided a single voice of the industry on Capitol Hill and in federal intergovernmental battles.
- In concert with the U.S. Maritime Coalition, stymied efforts by Australian shipbuilders to repeal the U.S. build requirement, with the result they entered into joint ventures with U.S. shipyards.

**Legislative Victories**
- Prevented enactment of any anti-cabotage bills introduced since 1995.
- Coordinated and led effort to obtain majority support for H.Con.Res 65
- Identified and successfully opposed a provision in the 1996 Coast Guard Authorization Act that would have eliminated the U.S. build requirement for lease financed vessels.
- Blocked an effort to recast the national maritime policy in federal law as one encouraging U.S. owned and operated vessels only “insofar as practical,” thus all but abandoning the principles of the Jones Act.
- Beat back the kaolin clay industry when it aggressively sought a Jones Act waiver.
- Blocked an all-out effort by North Carolina hog farmers and others to waive the Jones Act for the transport of feed grain products.
- Defeated Senate legislation repealing the Passenger Vessel Services Act, prevented legislation designating Panama as a “distant foreign port,” and worked to establish an acceptable system of administrative waivers for small passenger vessels.
- Convinced the Administration that a waiver of the Jones Act sought by agriculture interests following Hurricanes Katrina and Rita was unnecessary.

**Managing Public Perception**
- Reversed the anti-Jones Act focus of the trade press that existed in 1995. Maritime and transportation media generally now accept the Jones Act and related cabotage laws as core elements of U.S. maritime policy.
- Created a positive image of the U.S.-flag domestic fleet as a growing, highly productive means of transportation through reports and associated media activity.
Appendix A.1

Cabotage Provisions Summary –
Edited Extracts from individual WTO Members Country Reports 2001 - 2008

Argentina

- As at August 2006, there were 27 shipping lines, with domestic or foreign capital, operating in Argentina. A substantial proportion of the international goods traffic uses foreign-flag vessels.

- In 2002, the national merchant fleet had 70 units, as compared with 149 in 1991. However, in response to incentives, 55 vessels were registered under the national flag between August 2004 and April 2006; in August 2006, the Argentine fleet consisted of 212 units.

- Decree No. 817/97 of 26 May 1992 on Port Activities introduced the deregulation of the waterborne transport sector, providing for it to develop within a context of free play between supply and demand, under conditions of reciprocity and with minimum requirements.

- Decree Law No. 19.492 of 25 July 1944, ratified by Law No. 12.980, provides for coastal shipping and trade (cabotage) to be reserved for Argentine-flag vessels.

- This restriction also applies to cargoes which are ultimately to be exported and when during the voyage the vessel puts in at one or more foreign ports. In addition, it applies to transhipment, dredging and towing operations and any other service or commercial activity carried out in Argentine (maritime, river or lake) waters.

- Vessels providing cabotage services within Argentina must be owned by Argentine citizens or companies legally established in Argentina and registered as ship owners in the National Ship owners Register.

- Article 6 of Decree Law No. 19.492 of 25 July 1944 empowers the National Executive to authorize foreign vessels to provide national cabotage services if there are no Argentine units capable of providing them.

- A total of 94 exceptions were granted in 2005, and 50 in the first seven months of 2006. There were also 16 exceptions granted for dredging in 2005 and 5 in the first half of 2006.

- Decree No. 1.010/2004 repealed Decree No. 1.772/91, which had established a provisional suspension of flags regime in favour of the Argentine flag.

- A regime was created for Argentine ship owners under which they are granted facilities for bare-boat chartering of vessels in accordance with their gross registered tonnage under the national flag, with the exclusion of vessels and floating structures that can be built in Argentina.
Vessels eligible for the regime are authorized to carry out coastal and international operations, being considered to be under the national flag for a period of between one and three years from the date of enrolment in the Register.

Vessels incorporated in the Register are placed under the temporary admission procedure.

The requirements for enrolment in the Register include permanent domicile (natural persons) or establishment (legal persons) in Argentina, the registration under their ownership or the operation of at least one Argentine-flag vessel, or the conclusion of a shipbuilding contract with an Argentine shipyard and registration as a ship owner.

To promote shipbuilding in national shipyards, Decree No. 1.010/2004 authorizes, for up to 24 months, ship owners with vessels under construction in Argentine shipyards to use for coastal traffic foreign-registered vessels with characteristics similar to those of the vessels under construction and up to 100 per cent of the tonnage contracted, and to charter vessels intended for activities in support of off-shore petroleum operations for the equivalent of 200 per cent of the tonnage to be built in national shipyards.

Decree No. 1.010/2004 also established an import regime for inputs, parts and/or components not produced in MERCOSUR, intended for the construction and repair in the country of vessels and floating structures classifiable in headings 8901, 8902, 8904, 8905 and 8906 of the MERCOSUR Common Nomenclature, at a tariff rate of zero per cent.

Foreign-flag vessels and floating structures covered by Decree No. 1.010/2004 must have exclusively Argentine crews and modifications to and repairs to vessels and structures covered by the regime must be carried out in shipyards and workshops in Argentina.

The Maritime Transport Agreement between Argentina and Brazil, signed on 15 August 1985 and approved by Law No. 23.557, O.J. of 18 July 1988, grants reciprocity in the transport of cargoes and reserves for vessels registered in the two countries the transport of goods between their ports, whether those goods be in commercial trade or transhipments for or from third countries. The Maritime Transport Convention between Argentina and Cuba of 13 November 1984, approved by Law No. 23.432, O.J. of 27 March 1987, reserves the carriage of their foreign trade for vessels registered in the two countries.

## AUSTRALIA

### 2.1 Registration

Majority Australian owned, unless designated as chartered by an Australian operator.

### 2.2 Cabotage

Both domestic and foreign-flagged vessels are required to obtain a licence or a permit to operate in Australia’s coastal shipping.
To obtain a licence, operators are required to pay their crew Australian rates of pay while the vessel is engaged in coastal shipping in Australia, and must not be receiving subsidies from foreign governments.

2.3 Cabotage Permits and Waivers

If the Minister for Transport is satisfied that there is no suitable licensed ship available for a shipping task, or the services provided by a licensed ship are considered inadequate, and an unlicensed ship meets the "public interest" requirement, a single voyage or continuing permit may be granted to the unlicensed ship.

The "public interest" is assessed on a case-by-case basis. Permits are almost always related to foreign-flagged vessels – Vessels with permits carried 24% of coastal tonnage in 2003/04, and performed 32% of coastal tonne-kilometres.

3 BANGLADESH

3.1 Registration

Flag Registration is governed by the Bangladesh Merchant Shipping Ordinance, 1983. To be registered under the Bangladesh flag vessels must be manned by Bangladeshi nationals. Qualifying ownership:

- A citizen of Bangladesh;
- A company whose principal place of business is in Bangladesh;
- A company with 50% of its shares and voting power held by Bangladesh citizens;
- A company where the majority of directors are Bangladesh citizens;
- Or a company whose Chairman or Managing Director of the Board of Directors is a Bangladeshi citizen. Moreover, the vessels must be.

3.2 Cabotage

No official cabotage policy. Bangladesh Inland Water Transport Authority responsible for supervision of ports. According to the WTO “Cabotage practice has shielded the domestic water-borne routes, including inland waterways and coastal routes, from foreign competition”
4 BRAZIL

4.1 Registration

- Law No. 9,432/97 sets out the conditions in which waterway transportation of goods is allowed to foreign vessels. Brazilian flag vessels must be:
  - registered in the Registry of Maritime Property (see below),
  - owned by natural persons resident and domiciled in Brazil or by a Brazilian shipping company (EBN) established in Brazil according to domestic law;
- There are no restrictions as to the origin of its capital.
- The captain, the chief engineer, and two thirds of the crew of a Brazilian flag vessel, must be Brazilian nationals;
- Where vessels carry a Special Brazilian Registry (REB), the captain and the chief engineer must be Brazilian nationals.

4.2 Cabotage

- 35 shipping companies (authorised to perform) cabotage services; 48 for maritime support services and 77 for port support services. These companies were either Brazilian-owned or foreign-owned established in Brazil.
- Cabotage is restricted to domestic flag vessels operated by a Brazilian national or a Brazilian shipping company (EBN).
- Brazilian ships must be registered in the Registry of Maritime Property, as mandated by Law No. 7,652/88.
- Brazilian flag vessels may also be registered in the Special Brazilian Registry (REB). The REB option is offered to EBNs having ships under construction in a shipyard established in the country. Such optional registration opens the way for a number of benefits designed to foster Brazilian shipbuilding industry development (see below).
- To operate as an EBN a firm must be established in the country, in accordance with Brazilian Law, and own at least one ship technically adequate for the trade envisaged.
- A minimum liquid capital of R$8 million is required for long-haul navigation, R$6 million for cabotage, and R$2.5 million for port or maritime support navigation. There are no restrictions on the national origin of the capital. The ANTAQ is responsible for granting these authorizations.

ANTAQ online information. Available at: http://www.antaq.gov.br/Portal/Autorizacoes/Mostra.asp?opcao=LC.
To operate in Brazil, a foreign non-vessel-operating common carrier (NVOCC) must name a Brazilian representative and register with the Merchant Marine Fund Department of the Ministry of Transport.

### 4.3 Cabotage Permits and Waivers

- Foreign vessels are only allowed to engage in **cabotage**, interior navigation, and navigation within the ports, when chartered by an EBN, for which authorization is required.
- **Authorizations may be granted if a Brazilian flag vessel of the required type is not available**, if there is declared public interest, or if the foreign vessel substitutes for one that is under construction in Brazil.

### 4.4 Cabotage shipping support measures

- Brazil applies an additional tax for the renovation of the merchant marine (Adicional de Frete para Renovação da Marinha Mercante, AFRMM) on the freight charged by Brazilian and foreign enterprises operating in Brazilian ports. The AFRMM was created by Decree-Law No. 2,404, of 23 December 1987, and has its legal basis in Law No. 10,893 of 13 July 2004. The charge is 10% of the freight for transportation between Brazilian ports; 25% for long-distance navigation (international routes) by both Brazilian and foreign carriers; and 40% for inland waterway transportation of liquid bulk cargoes within the north and northeast regions of Brazil. The AFRMM does not apply to countries with which Brazil has negotiated a specific clause in the LAIA Economic Complementary Agreements.
- Proceeds from the collection of the AFRMM are destined the Merchant Marine Fund (FMM), to be used for the financing of projects for ship construction, repair or improvements in Brazil, as well as shipyards and facilities established or to be established in the country. The funds are managed by the BNDES, on behalf of the FMM and the Ministry of Transport.
- Freight receipts from the international transportation of merchandise by an EBN in ships registered in the Special Brazilian Registry (REB) are exempt from the Social Integration Programme (PIS) and the Contribution for Social Security (COFINS).  
- The construction, maintenance, repair, and modernization of REB-registered ships in Brazilian shipyards benefit from the same fiscal treatment granted to exports of industrial goods in general.
- Brazilian shipbuilders and shipyards established in the country may receive credits from the BNDES at interest rates ranging from 4% to 6%, with repayment periods of up to 20 years, and for up to 90% of the total cost of the project.

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7 Transporter for small volumes for export.
8 Law No. 9,432, 8 January 1997.
5 CANADA

5.1 Registration

- To register a ship in Canada, the owner must be:
  - A Canadian citizen,
  - Permanent resident
  - Or a corporation incorporated under federal or provincial laws of Canada (regardless of the origin of capital).

- foreign corporations may also register a ship in Canada, if:
  - the ship is not already registered in another country; and
  - if one of the following is acting with respect to all matters relating to the ship:
    - A subsidiary of the foreign corporation that is incorporated in Canada,
    - An employee or director in Canada of a branch office of a corporation that is carrying business in Canada, or
    - A ship management company incorporated under the federal or provincial laws of Canada.9

- Canadian-registered ship must be operated by Canadian officers and a Canadian crew, hold Canadian certificates, and comply with Canadian safety standards. The pertinent regulations are the Crewing Regulations and the Marine Certification Regulations.

5.2 Cabotage

- The majority of the Canadian fleet serves the cabotage market

- Dry bulk carriers constitute the central part of the Canadian merchant fleet; they accounted for 46% of tonnage and 33% of vessels in 2005. In eastern Canada domestic cargo is dominated by crude oil shipments and petroleum products. In western Canada transport of forest products by tug and barge is the primary activity. Within the Great Lakes and the St. Lawrence region, water transport is related mainly to cargo movements of iron ore, coal, limestone, salt, grain, tanker products and other types of bulk.

- The Coasting Trade Act reserves certain commercial maritime activities to duty-paid, Canadian-registered ships in Canadian waters, including activities related to the exploration, exploitation, and transportation of non-living natural resources in the waters above the continental shelf.

- These activities include the transportation of goods or passengers by ship between points in the territory of Canada or above the continental shelf of Canada, and any other marine

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activity of a commercial nature in the territory of Canada and the waters above the continental shelf.

5.3 **Cabotage Permits and Waivers for foreign ships**

- Foreign ships may perform these activities where no Canadian registered duty-paid ship is available or suitable to carry out the activity and where the activity entails the carriage of passengers, an identical or similar marine service is not available.

6 **CHILE**

6.1 **Registration**

- Article 11 of Decree Law No. 2.222 establishes that only a Chilean national or company incorporated in Chile is allowed to register a ship in Chile.
- Ships, other than for fishing, owned by foreigners may be registered as Chilean if:
  - The foreigners are domiciled in Chile,
  - The principal location of their business is Chile; or
  - They exercise permanently a profession in Chile.
- The chairperson, managers, and directors of such a shipping company must be Chilean, and more than 50% of the capital of the company must be owned by Chileans.

6.2 **Cabotage**

- Article 3 of the Maritime Transport Law reserves national maritime cabotage for Chilean enterprises.
- Foreign vessels may participate in coastal trade when the volume concerned exceeds 900 tonnes;
- Prospective carriers must participate in a public tender for a concession.

6.3 **Cabotage Permits and Waivers**

- For cargo inferior to 900 tonnes, foreign vessels may also be used when no Chilean vessel is available.
- Foreign vessels are allowed to engage in cabotage of empty containers under the principle of reciprocity.
- Transport from and to the harbour of Arica is not considered national cabotage.
7 CHINESE TAIPEI

7.1 Registration

- The *Ministry of Transportation and Communications* is the main authority regulating Chinese Taipei's maritime transport sector, and the *Shipping Law* is the main legislation governing the sector.
- Any person wishing to engage in sea transport as a vessel carrier must obtain approval. Purchase of existing overseas vessels also requires approval.
- Tariffs must be submitted to the authorities for "examination".
- Minimum capital requirements are set by the MOTC

7.2 Cabotage

- Cabotage is not permitted to vessels registered overseas, unless a franchise is granted. Cross-strait traffic via direct route is prohibited.
- Permits are required to engage in domestic liner services

8 COLUMBIA

8.1 Registration

- The vessel must be listed in the register kept by the port authorities in order to have the right to fly the Colombian flag.
- The *Commercial Code* restricts ownership of a Colombian-registered commercial vessel to Colombian nationals. This restriction cannot be applied because the Council of State has determined that it is contrary to the principles enshrined in *Articles 13 and 100 of the Constitution*.
- The captain, officers and 80 per cent of the rest of the crew of Colombian-registered vessels must be of Colombian nationality.
- *Decree No. 804 of 2001* defines a Colombian maritime transport company as:
  - a natural person whose principal domicile is in Colombia; or
  - a legal person established according to Colombian regulations, duly authorized and holding an operating permit
- The *Commercial Code* provides that foreign capital holdings in "Colombian maritime companies" may not exceed 40 per cent. The Council of State determined that this

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10 Article 1458.
provision was not in effect "since it had been tacitly repealed by Law No. 9 of 1991 on grounds of inconsistency with the provisions of Article 15 thereof, which moreover is a subsequent and special law ..."

8.2 Cabotage

- There are 10 Colombian companies and 94 foreign companies operating ships providing international maritime transport. A further 103 Colombian shipping companies are engaged exclusively in cabotage transport, while 27 Colombian shipping companies provide both international services and cabotage.
- Access to the cabotage maritime transport market is restricted to companies composed of natural persons whose main domicile is in Colombia or legal persons established in Colombia.
- In both cases, a company must have at least one Colombian-registered vessel. In principle, cabotage services should be supplied by Colombian-registered ships.

8.3 Cabotage Permits and Waivers

- Companies may lease or charter foreign-registered vessels for certain voyages provided that they obtain authorization from the DIMAR.13
- An authorization and an operating permit issued by the DIMAR are required in order to provide scheduled maritime transport services.
- This requirement applies both to Colombian and foreign companies.
- The authorization and operating permit are given for an indefinite period and for specified types of service, namely, general transport services, container transport, bulk transport, passenger transport, or combined transport; they may not be assigned.
- The authorization and operating permit are granted automatically. Relevant requirements are set out in Decree No. 804 of 2001.14
- DIMAR has a time-limit of 90 days as of the date of the application in which to grant the authorization and operating permit.15
- Since 1997, authorities have received 348 applications; 283 companies are in possession of an authorization and operating permit; 33 companies have cancelled their authorizations and operating permits; and 32 companies sent in incomplete applications.16
- Suppliers of unscheduled maritime transport services must apply to the DIMAR for authorization for each voyage from a Colombian port.

12 Article 1426.  
13 Ibid., Article 26.  
14 Article 11.  
15 Article 8, Decree No. 804 of 2001.  
16 Information at August 2006.
Foreign-registered vessels may not provide port services in Colombian waters. The DIMAR may, however, authorize the supply of such services by a foreign-registered vessel if no Colombian-registered vessels are able to provide them. The authorization is given for six months and may be extended for up to a maximum of one year.

9 ECUADOR

9.1 Cabotage

The Law on the Facilitation of Exports and Waterborne Transport reserves domestic waterborne freight and passenger transport to vessels flying the Ecuadorian flag.

9.2 Cabotage Permits and Waivers

The Merchant Marine and Coastal General Directorate can authorize national shipping companies to lease or rent out vessels of other flags on a bareboat charter basis "in exceptional cases".

Such cases encompass the following situations:
- Temporary lack of transport capacity;
- Total or structural loss of a vessel;
- Major repairs to a vessel lasting over six months;
- Transport of specialized products;
- Needs relating to national security.

10 GHANA

10.1 Registration

The Ghana Shipping Act of 2004 governs the registration of ships. The Ghana Maritime Authority (GMA), established in 2004, is responsible for monitoring and regulating maritime activities.

GMA shipping register contains 298 fishing vessels, 23 cargo vessels, and 43 small craft.

Foreigners must form joint-ventures with Ghanaians in order to register.

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17 Article 38, Decree No. 1423 of 1989.
18 Law on the Facilitation of Exports and Waterborne Transport, Article 16.
19 Regulation on Maritime Activity, Article 125.
authorities are examining this requirement with a view to allowing more foreigners to register and operate ships in Ghana

10.2 **Cabotage**

- The *Ghana Shipping Act* restricts maritime cabotage to domestic companies.

11 **GUYANA**

11.1 **Registration**

- The registration of ships in Guyana is limited to:
  - Nationals of Guyana or of other CARICOM countries, or
  - Corporate bodies established in Guyana and having their principal place of business in the country.
- The Government of Guyana continues to own the National Shipping Company, and there are currently no plans to privatize this enterprise.

11.2 **Cabotage**

- The *Guyana Shipping Act (1998)* establishes the legal framework for maritime services in Guyana (Cap. 49:01). Under *Section 10 of the Act only Guyana ships may trade exclusively between Guyana ports*;

11.3 **Cabotage Permits and Waivers**

- This rule (*Section 10 of the Act*) is subject to regulations, exemptions, or "any bilateral or multilateral treaty or agreement."

11.4 **Support Provisions**

- The flagging of vessels affects the fees and taxes to which they are subject.
- Foreign-flag vessels may purchase fuel duty-free
- Fuel purchased by Guyana-flagged vessels will include the consumption tax on fuel.
- Foreign-flag vessels are subject to port fees, most of which are not applied to Guyana-flag vessels.
12 HONDURAS

12.1 Registration

- Honduras' national merchant fleet comprises 1,661 vessels of over 5 gross tonnes and 861 of less than 5 tonnes, whose operations are supervised by the Directorate-General of the Merchant Marine.

- The Vessel Registration department keeps three registers of vessels:
  - The Register of Large Vessels, which lists all vessels weighing over 20 gross tonnes;
  - The Register of Small Vessels, which includes vessels weighing less than 20 gross tonnes but more than 5;
  - And the Register of Owners, Charterers, and Ship owners.

- The first two registers list all vessels belonging to the Honduran Merchant Marine whether or not they usually navigate in Honduran waters and irrespective of the nationality of the owner, charterer, or ship owner and his place of domicile.

- Registers are open to Honduran and foreign vessels.

- Any vessel registered in Honduras becomes a Honduran vessel and is temporarily subject to Honduran legislation as long as it is registered in Honduras.

- The navigating permit, which has a term of four years, proves that the vessel comes under the Honduran flag.

- A Register of Shipping Companies is also kept and it includes firms engaged in domestic maritime traffic and cabotage (first section of the Register) and firms engaged in foreign maritime traffic (second part).

- Natural or legal persons wishing to provide towing, maritime agency, ship and cargo broking, dredging, underwater, maritime accounting, salvage and maritime communication services must be listed in the Register of companies providing maritime services kept by the Directorate-General of the Merchant Marine. There are no restrictions on nationality.

12.2 Cabotage

- The Basic Law on the National Merchant Marine contains a reservation on cabotage for commercial purposes, which is limited to Honduran merchant vessels.

- To be able to provide domestic maritime and cabotage services, shipping companies must be established and domiciled in Honduras and 51 per cent of their registered capital must be held by Honduran nationals.

- The provision of cabotage services generally requires prior authorization by the Directorate-General, after it has heard the views of the Ministry of Public Works, Transport and Housing.
12.3 Cabotage Permits and Waivers

- Article 40 of the Basic Law on the National Merchant Marine provides that "where there are no Honduran merchant vessels or they are not available, and for as long as those circumstances persist, the Directorate-General of the National Merchant Marine may authorize foreign merchant vessels, especially those under a Central American flag, to provide cabotage services in Honduras".

13 INDIA

13.1 Registration

- 100% foreign investment is allowed in the shipping sector, including for coastal shipping

13.2 Cabotage

- Cabotage is reserved for Indian-flag vessels,

13.3 Cabotage Permits and Waivers

- Foreign-flag vessels are permitted to carry coastal cargo when no Indian-flag vessel is available.20


14.1 Cabotage

- Indonesia has maintained strict control over access to its coastal trades, reserving them for nationals under Regulation PP17 of 1988 which inter alia reserves coastal trades for Indonesian-flag vessels and provides operating subsidies for vessels used on selected inter-island routes.
- It is unclear to what extent Indonesia’s cabotage policy has been effective in reserving domestic cargoes for Indonesian owned and flagged vessels.

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According to authorities, the main problem in sea transportation is the declining share of the national shipping fleet, which accounted for 51% of domestic transportation and only 4% of international sea cargo in 2003.

The Government is aware of the need to fully implement the cabotage principle for domestic transportation so that the national shipping fleet can transport all of the domestic cargo.

Public and private investment is necessary for the rejuvenation of national commercial ships, the majority of which, according to the Government, are obsolete and inefficient.

### 14.2 Cabotage Permits and Waivers

- The Industrial Shipping Law (1988) allows shipping lines to use foreign flag vessels with certain limitations when local flag tonnage is not available.
- Indonesian law allows foreign companies to participate in local trade, provided they do so in joint ventures with Indonesian partners.
- Government Regulation No. 20(1994) allows up to 95% foreign investment in shipping ventures.

### 15 Japan

#### 15.1 Cabotage

- The Maritime Bureau and the Ports and Harbour Bureau of the Ministry of Land, Infrastructure and Transport (MLIT) are the main authorities regulating Japan’s maritime transport.
- Cabotage restrictions generally allow only Japanese-flag carriers to carry cargo and passengers between Japanese ports;
- Japan accords limited access to maritime cabotage service for ships flying certain flags, on a reciprocal basis, pursuant to treaties of friendship, commerce, and navigation.
- In order to mitigate the decrease in the number of Japanese-flag carriers, the Government provides support for Japanese-flag carriers (the so-called International Ship Regime).
- The Government has been providing such support measures, including tax breaks in respect of ship registration tax and local property tax, to increase the competitiveness of Japanese vessels vis-à-vis those of other countries that provide preferential tax treatment for their registered ships;
- In the tax reform of FY 2006, the preferential registration tax rate under the International Ship Regime was raised to 2.5% from 2.0% previously (compared with 4.0% charged to ordinary vessels).
16 KOREA

16.1 Registration

- The maritime sector is regulated through the Korean Maritime Law
- Korea's merchant fleet capacity rose from 11 million gross tonnes in 2003 to approximately 15 million gross tonnes in 2006.\(^{21}\)
- The sector is highly concentrated with the five largest operators controlling over 70% of the market.\(^{22}\)
- Foreign carriers are accorded national treatment at Korean ports and in the registration process. Carriers need to be incorporated and have equity of W 500 million and a cargo capacity of 5,000 tonnes.
- In 2008, the number of foreign crew members permitted on a Korean ship was increased from six to ten.

16.2 Cabotage

- Cabotage continues to be reserved for Korean vessels;
- Foreigners are allowed to participate in transport of goods and passengers between North and South Korea as a minority joint-venture partner with a South Korean firm.

17 MEXICO

17.1 Registration

- In 2006, there were five domestic shipping lines and 75 foreign lines offering high-seas maritime transport services from Mexican ports. The merchant marine, which in 2006 consisted of 239 vessels with a capacity of more than 1,000 GRT, is relatively small. In 2006, vessels belonging to foreign merchant fleets were responsible for transporting 31 per cent of cabotage and practically all of high-seas cargo.\(^{23}\)

17.2 Cabotage

- Changes introduced by the 2006 Shipping and Maritime Trade Law relate to foreign participation in cabotage shipping.
- **The new Law continues to reserve cabotage for Mexican ship-owners**

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21 Information provided by the authorities.  
22 Lee et al. (2007).  
23 Information provided by the authorities.
Under the Foreign Investment Law (Chapter II (4)), foreign investment in the maritime transport sector is limited to a maximum of 49 per cent of total capital in APIs and in shipping companies that commercially exploit vessels for inland and coastal navigation, with the exception of tourism cruise ships, and certain port operations such as dredging.

17.3 Cabotage Permits and Waivers

2006 Shipping and Maritime Trade Law stipulates that if there are no Mexican vessels available under similar technical conditions, the SCT may only grant temporary permits to:

- Mexican ship-owners with a foreign vessel under bare-boat charter, or
- Mexican ship-owner with a foreign vessel under some leasing agreement.

The new Law no longer permits the SCT to grant permits to foreign shipping companies. The period of validity of the temporary permits was reduced to three months and no permit for the same vessel may be renewed more than seven times. Mexican ship-owner holding a temporary permit for a foreign vessel must register it under the Mexican flag if it is going to stay in Mexican waters for more than two years.

The Foreign Investment Commission may authorize foreign participation above 49 per cent in port services for inland waterway navigation operations, as well as in shipping companies engaged exclusively in high-seas traffic.

The authorities have noted that in recent years authorizations to exceed the permitted percentage of 49 per cent have been granted.

17.4 Support measures

In 2006, the Federal Government created the Mexican Merchant Marine Development Fund (Fondemar) with a view to:

- Helping Mexican shipping companies to obtain financing for buying, building or modernizing vessels for maritime traffic.
- In each case the SCT must determine Fondemar's level of participation in the credit risk through guarantees.
- According to information provided by the authorities, the resources allocated to Fondemar amounted to 117 million pesos (US$10.7 million).
18  NICARAGUA

18.1  Cabotage

- No. 399, Law on Water Transport\(^{24}\), allows foreign investment in some segments of maritime transport (for example, the registration of vessels and the setting up of a shipping company)
- Nicaragua reserves domestic and cabotage traffic to Nicaraguan-registered vessels operated by Nicaraguan shippers.

18.2  Cabotage Permits and Waivers

- Foreign vessels may be authorized if no Nicaraguan or Central American vessel is available.

19  NIGERIA

19.1  Cabotage

- The Nigerian Coastal and Inland Shipping Act, passed in 2003, introduced a cabotage shipping regime, which has been in force since May 2004.
- The Act contains waiver provisions that allow foreign firms to engage in coastal shipping in the event that Nigerian firms lack the required capacity.
- Nigeria has insufficient shipping lines to fully use its shipping rights under its cabotage regime and the UNCTAD Code for Liner Conferences tonnes.

20  PARAGUAY

20.1  Registration

- The CNFM classifies vessels into Paraguayan and foreign vessels (Article 7).
- In order to be considered Paraguayan, vessels must:
  - Comply with the regulations in force,
  - The ship’s master or owners must be Paraguayan,
  - Pursuant to Decree No. 2.785/59, two thirds of the crew must be Paraguayan nationals.
- The ship’s master and owners, as well as two thirds of the crew, in the Paraguayan merchant marine must be Paraguayan citizens (either by birth or naturalized).
- Ratings need not be Paraguayan.

\(^{24}\) *La Gaceta* No. 166 of 3 September 2001.
Foreigners working in the merchant marine may have their professional qualifications endorsed in accordance with the provisions contained in international treaties, reciprocity or Law No. 1.158/95.

Paraguayan legislation reserves all maritime and river transport of imports and exports to Paraguayan-registered vessels.

20.2 Cabotage

Cabotage traffic is restricted to Paraguayan-registered vessels.

If the cargo is coming from or going to LAIA member countries, provided that the capacity exists, the requirement for maritime transport is up to 50 per cent and for river transport at least 50 per cent.

21 PERU

21.1 Registration

In 2007, 60 foreign companies were operating ships involved in Peru's foreign trade:

- Forty shipping companies are registered for cabotage traffic,
- Eight Peruvian companies have operating permits for both domestic and international transport and
- Eleven Peruvian companies have operating permits for international transport alone.

Law No. 28583 (Article 9) provides that all Peruvian-registered ships must be listed in the Ship Register kept by the Superintendencia Nacional de Registros Públicos (National Supervisory Authority for Public Registers).

Entry in the register, *inter alia*, requires that the Peruvian ship or Peruvian shipping company be in possession of a permit from the Dirección General de Transporte Acuático (Directorate-General of Water Transport) and, if the ship has been listed in a foreign register, that listing must be cancelled or suspended.

After listing in the Ship Register, which confers ownership, the registration authority informs the Dirección General de Capitanías y Guardacostas (Directorate General of Harbour Authorities and Coastguards) so that it can grant the registration certificate that authorizes the Peruvian flag to be flown and free navigation within and outside Peru's territorial waters.

Peruvian-registered ships must have a Peruvian captain, except in exceptional circumstances, and at least 80 per cent of the crew must be Peruvian nationals.

The majority of the shipping fleet operated by companies in Peru is foreign-registered.
21.2 Cabotage

- The conditions governing cabotage (domestically) are laid down in Law No. 28583 of 23 June 2005.
- Commercial water transport for domestic traffic is exclusively reserved for:
  - Peruvian-registered merchant vessels belonging to Peruvian ship owners or
  - Peruvian shipping companies or operating under financial leasing or
  - Bareboat charter arrangements with a mandatory purchasing option.
- The Law also requires, *inter alia*, that a Peruvian ship owner or Peruvian shipping company be a natural or legal person of Peruvian nationality established in Peru, with its principal domicile, and actual and effective head office in Peru.
- For legal persons, at least 51 per cent of the paid-up equity must be held by Peruvian nationals.
- The chairman of the board of directors, the majority of directors and the chief executive officer must be of Peruvian nationality and reside in Peru.

21.3 Cabotage Permits and Waivers

- For transport by water between Peruvian ports, if there are no Peruvian ships, foreign-registered ships operated by Peruvian crews or Peruvian shipping companies may be chartered for a period not exceeding six months.
- For reasons of security and national defence, a minimum of 25 per cent of the hydrocarbons transported are reserved for Peru's navy on domestic routes.
- The Andean Community countries are given preferential treatment for cabotage services within the Andean Community region, as provided in Decision No. 288 of 21-22 March 1991 of the Commission of the Cartagena Agreement.25
- The Decision gives freedom of access for cargo originating in and intended for shipment by sea within the Andean region on vessels owned, chartered or operated by shipping companies of the member countries and of third countries.

22 PHILIPPINES

22.1 Registration

- The Maritime Industry Authority (MARINA), an "attached agency" of the DOTC, is responsible for the regulation, supervision, promotion, and development of the four maritime sectors (domestic and overseas shipping, shipbuilding/repair, and manpower).

25 Other complementary Andean provisions are: Decision No. 314 of 4-6 February 1992; Decision No. 390 of 2 July 1996; Resolution No. 422 of 5 August 1996; Decision No. 487 of 7 December 2000; and Decision No. 532 of 2 October 2002.
Only Filipino nationals or locally incorporated entities are authorized to engage in overseas shipping and with a maximum of 40% foreign equity may register a vessel.

Philippine-registered vessels must be completely manned by Filipino crews except in approved cases where a "supernumerary" may be allowed for up to six months, provided the functions performed are not those of the crew and do not interfere with the ship's management.

22.2 Cabotage

National (including inter-island) shipping is limited to Philippine-flagged and owned vessels engaged in domestic trade;

22.3 Cabotage Permits and Waivers

In specific cases, however, MARINA may issue Exemption or Special Permits temporarily allowing Philippine-registered ships engaged in international trade to conduct domestic trade.

Special permits can be issued when:
- No existing vessel is operating in the proposed route or area,
- No suitable local vessel is available that meets the shipping requirements,
- The proposed vessel is contracted by private/public entities, and
- For tourist passenger vessels, the itinerary includes operating calls at domestic ports.

Cargo rates are not taken into account in determining the availability of suitable domestic services. Special permits are for up to three months and exemption permits are limited to one year.

22.4 Support measures

Special permits of up to one year (renewable for one year) are also required for Philippine vessels to switch from domestic to international shipping.

This enables vessels engaged in domestic trade to expand operations globally under certain conditions.

Vessels engaged in domestic trade that may be issued Special Permits are those:
- Operating in the Brunei-Indonesia-Malaysia-Philippines (BIMP)-East Asian Growth Area (EAGA),
- Engaged in liner operations that include foreign ports in their trading routes, or
- Involved in occasional overseas trading. Such vessels must be fully managed, operationally controlled, and manned by Filipinos.
Government cargo (including that paid for by government loans and credits) is still reserved to Philippine-flagged vessels.

Investors in overseas shipping are entitled to a ten-year income tax holiday and tax and duty exemptions on imported vessels until 27 July 2014. ¹ Provided that (a) at least 85% of net income is reinvested in ship construction, modernization or acquisition, including of related equipment, and (b) such amounts remain invested either for the period of the income tax exemption or until fully paid, whichever happens first.

23 THAILAND

23.1 Cabotage

Cabotage restrictions reserve domestic shipping for national security reasons to Thai-flagged vessels that are owned by Thai nationals or companies with at least 70% Thai equity.

Under the Foreign Business Act, a company registered under Thai law with foreign equity not exceeding 49% may operate domestic transport, including domestic shipping.

A company with less than 70% Thai equity may hire a "Thai flagged" vessel to provide domestic shipping services.

The Thai Vessels Act B.E. 2481 requires that Thai domestic vessels have at least 50% Thai crew.

23.2 Cabotage Permits and Waivers

Under certain conditions, e.g. when domestic shipping capacity is inadequate, foreign vessels may be allowed to provide domestic services,

This is subject to ministerial approval on a case-by-case basis;

The number of foreign vessels authorized to provide domestic services dropped from 14 (September 2003) to 12 (May 2007).
24 TUNISIA

24.1 Cabotage

- Coastal traffic remains exclusively reserved for the national shipping company, and the same applies to towing operations inside ports or in Tunisian territorial waters or between Tunisian ports, except by special derogation.

25 TURKEY

25.1 Registration

- The following ships are considered as Turkish:
  - ships that belong to legal persons, such as bodies, institutions, associations, and foundations set up in accordance with Turkish law, the majority of whose Board of Directors are of Turkish nationality; and
  - ships that belong to trading companies, the majority of whose managerial staff and representatives are of Turkish nationality and are registered on the Turkish Trade Register
- Turkey has two ship-register systems, the National Ship Registry and the International Ship Registry.
- In order to fly the Turkish flag, on the National Ship Registry, shipping companies must be 51% owned by Turkish nationals (Commercial Law No. 6762).
- First mates and masters of ships must be of Turkish nationality,
- While up to 40% of the officers of ships engaged in international seaborne transportation (i.e. excluding cabotage) can be foreign nationals.
- Ships and yachts owned by Turkish and/or foreign persons resident in Turkey and companies incorporated under Turkish legislation, can be registered with the Turkish International Ship Registry in Istanbul, and fly the Turkish flag.
- National vessels can be authorized to change flag for a period of between one and two years when they are bareboat "chartered out", while foreign vessels can be authorized to fly the national flag for a period of one to two years when they are bareboat "chartered in".

25.2 Cabotage

- Under Cabotage Law No. 815, merchant maritime transport and passenger services, pilotage, and all other port services can be provided only by Turkish flag ships.
25.3 **Support measures**

- Vessels flying the Turkish flag benefit from a price preference: when bidding for public cargoes to be shipped overseas or carrying strategic raw materials, they are awarded the bids if their quotation is up to 10% higher than the lowest foreign flag vessel quotation.

26 **URUGUAY**

26.1 **Registration**

- Law No. 16.387 of 27 June 1993 (Law on the Flag State) provides that in order to fly the Uruguayan flag merchant vessels must be definitively registered in the National Register of Vessels. The Law sets out the requirements for registration.

- There are restrictions on the nationality of the crews of Uruguayan merchant vessels. If the vessels are engaged in traffic that requires authorization, at least 50 per cent of the crew must be Uruguayan citizens either by birth or naturalized, including the captain, in accordance with Article 320 of Law No. 16.736 of 9 February 1996.

- When no authorization is required, only the captain, the chief engineer and the radio operator or chief steward must be Uruguayan citizens.

26.2 **Cabotage**

- Law No. 12.091 on Navigation and Cabotage Trade of 25 January 1954 provides that navigation and cabotage trade are reserved to Uruguayan-registered vessels.

- Cabotage trade includes domestic transport services by boat, between ports and coastal zones in Uruguay, including salvage, lightering and towing operations and other maritime operations by vessels in waters within Uruguayan jurisdiction.

- Vessels providing cabotage services in Uruguay must meet the following requirements if:
  - they are owned by natural persons, they must be owned by Uruguayan nationals domiciled in Uruguay; and
  - if they are owned by a company: (i) 51 per cent of the owners of the company must be Uruguayan citizens; (ii) 51 per cent of the shares with voting rights must be owned by Uruguayan citizens; and (iii) the company must be controlled and managed by Uruguayan citizens.

26.3 **Cabotage Permits and Waivers**

- The Executive may allow exceptions so that vessels flying other flags can provide cabotage services when Uruguayan vessels are not available.
26.4 Support measures

- Uruguayan merchant vessels are given a number of tax incentives. Decree Law No. 14,650 of 12 May 1977 (Law on the Merchant Marine) provides that the import of vessels of a tonnage exceeding 1,000 tonnes, as well as the import of vessels of lesser tonnage that cannot be built in Uruguay under proper technical or economic conditions, are exempt from tax.
- Uruguay-registered vessels are exempt from tax on the import of spare parts, equipment, fuel and lubricants necessary for their operation. Fuel and solid or liquid lubricants used in Uruguay-registered vessels are exempt from the IMESI.
- Shipping companies with Uruguay-registered merchant vessels are exempt from the IRIC, VAT and the Wealth Tax (PAT).
- The Law on Navigation and Cabotage Trade states that when a government authority issues a tender for a transport service a preference margin of 10 per cent applies to the freight. Law No. 17,930 of 19 December 2005 authorizes the Executive to lower by up to 100 per cent all navigation taxes and charges for pure cabotage operations.
- Law No. 14,100 of 29 December 1972 provides for the establishment of a Merchant Marine Promotion Fund and Decree-Law No. 14,650 regulates this. The Fund is used to grant loans to build vessels and for major repairs; renovation, conversion and modernization of vessels; as well as the purchase of new vessels built less than 15 years prior to the date of requesting the loan. During the period under review, three loans were granted by this Fund, amounting to US$500,000.

27 UNITED STATES OF AMERICA

27.1 Cabotage

- Cabotage restrictions remain in place. Section 27 of the Merchant Marine Act of 1920, commonly referred to as the Jones Act, reserves cargo service between two points in the United States (including its territories and possessions), either directly or via a foreign port, for ships that are registered and built in the United States and owned by a U.S. corporation, and on which 75% of the employees are U.S. citizens.
- The Jones Act does not prevent foreign companies from establishing shipping companies in the United States as long as they meet some restrictions, like the requirements with respect to U.S. employees.
- Under the Passenger Vessel Services Act of 1886, domestic passenger services are subject to similar requirements.
- MARAD estimates that the cargo preference laws generated over 10 million revenue tons of cargo and US$1.3 billion of ocean freight revenue in FY2006.\(^\text{27}\)

\(^{27}\) MARAD (2007a).
27.2 **Cabotage Permits and Waivers**

- Under certain circumstances, waivers to the Jones Act or the Passenger Services Act may be granted to foreign vessels and to U.S. vessels not protected by the Act. For example, Public Law 87-77 authorizes the transportation of passengers and merchandise in Canadian vessels between ports in Alaska and the rest of the United States, and Public Law 98-563 permits the transportation of passengers between Puerto Rico and other U.S. ports by foreign-flag carriers.

- Also, water-borne freight shipments between the U.S. Virgin Islands and other U.S. ports may be carried by foreign-flag vessels, and trade with Guam and other U.S. Pacific territories may be carried by foreign-built U.S.-flag ships that meet the ownership and crewing requirements.

- The Secretary of Transportation is authorized to waive the U.S. build requirements for foreign built or rebuilt small passenger vessels authorized to carry no more than 12 passengers in a specified area, provided this does not adversely affect U.S. vessel builders or the coastwise trade business of any person who employs vessels built in the United States.

- The Maritime Policy Improvement Act of 2002 allows for the granting of a Jones Act waiver for self-propelled tank vessels not built in the United States, provided the person requesting the waiver is a party to a binding legal contract, executed within 24 months after the date of enactment of the Act, with a U.S. shipyard for the construction in the United States of a self-propelled tank vessel.

- Vessels benefiting from the waiver must be U.S.-owned. The waiver may not be granted to more than three vessels.

27.3 **Support measures**

- The United States maintains a number of programmes to allow for the eventual use of its commercial fleet for defence purposes.

- The Maritime Security Program (MSP) supports the U.S.-flag merchant marine by providing a fixed payment to U.S.-flag vessel operators.

- The Maritime Security Act of 2003 (MSA) creates a new MSP for FY2006-15. The MSA authorized US$1.73 billion for FY2006-15 to support the operation of 60 U.S.-flag vessels. Subject to annual appropriations, the programme is administered on the basis of renewable one-year contracts, provided funding is available.

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28 MARAD online information. Viewed at: http://www.marad.dot.gov/Programs/msp/.
The Voluntary Intermodal Sealift Agreement (VISA) programme provides assured access to commercial intermodal capacity during time of war or national emergency. During 2007, 125 ships were enrolled in the VISA programme.

Some 77% of the VISA capacity comprises MSP participants' vessels. VISA participants receive priority for award of DOD peacetime ocean freight contracts.29

Under the Food Security Act of 1985, the minimum U.S.-flag requirement is 75% for shipments of agricultural cargoes under certain USDA and USAID foreign assistance programmes.

In 2006, 83% of food-aid preference cargoes were carried by U.S.-flag vessels.30

The Act also established the ocean freight differential (OFD) programme under which MARAD reimburses the USDA and USAID for the cost differential of using U.S.-flag ships to carry more than 50% of food-aid cargoes.31

The OFD programme funding level was US$175 million in FY2007, down from US$269 million in FY2006.

The Food Security Act of 1985 also foresees an additional reimbursement to the USDA, termed "Excess 20%", applicable if total costs incurred by the USDA for ocean freight and OFD on exports of agricultural commodities and products under certain agricultural programmes exceed 20% of the value of the commodities exported under these programmes; the reimbursement is made on the excess over 20%.

Under the Jones Act, only U.S. shipbuilders may supply ships on domestic routes; the United States was granted an exemption from GATT rules for measures prohibiting the use, sale, or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone.

There are no restrictions on foreign investment in U.S. shipyards or ship-repair facilities, but benefits under certain programmes may be contingent upon nationality requirements.

MARAD provides financial assistance to ship-owners and U.S. shipyards (section (3) above), and U.S. citizens owning or leasing vessels may obtain tax benefits to build qualifying vessels. Assistance is also provided to construct tank vessels in the United States and carry out improvements in small shipyards.

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29 Maritime Administration Office of Statistical and Economic Analysis.
31 The ocean freight differential (OFD) is the difference between the cost of shipping the same cargo on a U.S.-flag vessel and on a foreign-flag vessel.