

CABOTAGE: MEANING, POTENTIAL AND FUTURE

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1.0 Introduction: The word **cabotage** has been taken from the French word *caboter*¹. It popularly means *nautical* coastal navigation or shipping, especially within the borders of one country. It is also used to refer to the reservation to a country's carriers of its internal traffic, especially air traffic. Thus Cabotage, or coasting trade, refers to the trade or navigation in coastal waters between two points within a country. Cabotage also refers to the right to engage in trade and navigation in coastal waters and to the restriction of that right to domestic carriers.²

Cabotage is a form of protection resorted to by the states but it cannot be said to be a new form. It has a long history going back to the 17th century. It is based on the understanding that a state needs to have a domestic merchant marine fleet.³ Under French regime of the Colbert Ordinances etc., the external trade of a country had to be transported by ships flagged in the country manned with nationals and where colonial traffic was reserved to the flag of the country. The United Kingdom abolished this model in 1847 but traces of it remain in the legislation of numerous countries. In the United States, among some of the measures passed by the first Congress in 1789 was a law restricting registration for coastal trades and fisheries to U.S.-built and U.S owned vessels. U.S.-flag vessels were also given preferential treatment with respect to tonnage taxes and cargo import duties. Thus cabotage is not a new subject, rather it has a long history. The chief reasoning behind it was having some protection for national security, safety/ environment control, and economic protection or preservation. It was introduced as a discriminatory practice of keeping foreign flags out of coastal waters, to promote the development of national merchant fleets etc.

1.1 Significance of Cabotage:

The potential of cabotage is reflected in the opportunities' the domestic maritime industry of a state provides. Coastal trade or offshore industry covers all the activities carried on within exclusive economic zone. It includes fishing industry, passenger ferry services, towage, salvage, dredging(

¹ Collins English Dictionary – Complete and Unabridged , HarperCollins Publishers 2003

² Rossina Petrovena, Comment, Cabotage and the European Community Common Maritime Policy: Towards Free Provision of Services in Maritime Transport, 21 Fordham Int'l L.J. 1019, 1039-40 (1998)

³ M.A. Project, Monterey Institute of International Studies Kathleen Magee U.S. Cabotage Laws April 2002

coastal and inland waterways), liquid bulk e.g. chemicals, oil and its derivatives, dry bulk e.g., iron ore, coal, grains, general cargo (freeder and inland transport), container cabotage trade, shipbuilding and repair (ship yards, repair yards, emergency repair facilities, anchorage Maritime auxiliary services (freight forwarding services, storage and warehousing, maritime agency services, container/depot services), Port services (pilotage, bunkering, garbage and ballast waste disposal, communications and electrical supplies), Maritime insurance and finance sector (credit facilities for fleet and business expansion) etc.

If we look at the volume of today's trade in maritime services we can easily spotlight the importance. A joint publication of the Organization for Economic Co-Operation and Development (OECD) and the Statistical Office of the European Communities (Eurostat) breaks down the maritime transport valuations for OECD countries, a sampling of which proves interesting.⁴ In 1998 alone, the value in U.S. dollars of maritime transport services was \$4,020,000,000 in Canada;⁵ \$13,983,000,000 in Denmark;⁶ \$8,146,000,000 in France;⁷ \$33,954,000,000 in Japan;⁸ \$14,408,000,000 in the United Kingdom;⁹ and \$18,142,000,000 in the United States.¹⁰ These figures are representative of the importance of maritime transport in facilitating the trade in goods.

Because of its importance to world trade, maritime transport has historically been the focus of international attention, albeit through reciprocal arrangements between nations.¹¹ Maritime transport has been one of the most internationally integrated service sectors in the world. As written by the Secretary-General of the International Maritime Organization, "It has often been said that shipping is the most international of all industries--as well as being one of the oldest--and it is also one of the most complicated."¹²

⁴ See OECD & Eurostat, *OECD Statistics on International Trade in Services: 1989-1998* (2000)

⁵ Representing \$1,414,000,000 in credits and \$2,606,000,000 in debits for a net of -\$1,193,000,000. Id. at 54 (taken from Table A.2.1).

⁶ Representing \$7,284,000,000 in credits and \$6,699,000,000 in debits for a net of \$585,000,000. Id.

⁷ Representing \$3,454,000,000 in credits and \$4,692,000,000 in debits for a net of -\$1,238,000,000. Id.

⁸ Representing \$14,232,000,000 in credits and \$19,722,000,000 in debits for a net of -\$5,489,000,000. Id.

⁹ Representing \$6,618,000,000 in credits and \$7,790,000,000 in debits for a net of -\$1,173,000,000. Id. at 55.

¹⁰ Representing \$4,091,000,000 in credits and \$14,051,000,000 in debits for a net of -\$9,960,000,000. Id.

¹¹ William A. O'Neil, Foreword to Bruce Farthing & Mark Brownrigg, *Farthing on International Shipping*, at v (3d ed. 1997).

¹² Alan V. Deardorff, Saul H. Hymans, Robert M. Stern, & Chong Xiang, *Forecasting U.S. Trade in Services*, in *Services in the International Economy* 53, 65 (Robert M. Stern ed., 2001).

Even if we see the Cabotage law of Nigeria contained in The Coastal and inland Shipping (Cabotage) Act, 2003 we can get a glimpse of the importance of cabotage by the sheer breadth of its coverage. The Act provides that Nigerian Cabotage Regime aims to: Restrict the use of foreign vessels in domestic coastal trade; Promote development of Indigenous tonnage; Establish cabotage vessel financing fund; Reserve the bulk of coastal trade for vessels built, owned, registered in Nigeria and manned by qualified Nigerian seafarers; Stimulate and expose Nigeria's indigenous shipping firms to shipping business in the coasts as a stepping stone to deep sea/international shipping; Encourage acquisition of shipping technology by creating and diversifying employment opportunities in the industry; Improve environmental safety; Protect the nation's security interests; Enhancing domestic waterborne transportation; Increase national fleet/tonnage; Develop ship building and repair capability; Create opportunities for employment; Conserve foreign exchange; Protect national economy and security, etc.

Nigeria came up with the Nigerian coastal And island Shipping (Cabotage) Act 2003 as it found that domination almost exclusively of the commercial operations of carriage of goods, services and passengers in the inland and coastal waters of Nigeria including oil rigs and installation by Foreign owned and foreign crewed vessels to the exclusion of indigenous operators. In year 2000 it was found that only 139 indigenous marine vessels (less than 6%) were involved in this traffic. A passage from the Briefing to the Senate on the Enactment of Cabotage by the Maritime Cabotage Task Force of NSCA in 2002 reproduced hereunder states thus: "Currently 95% of marine vessels operating within Nigerian waters are owned by foreign shipping operators. Only about 3 out of the 12 product tankers presently engaged by the PPMC (NNPC) in coastal lifting of petroleum products are owned by Nigerians but are foreign flagged. Each vessel earns about US\$8,000.00 a day, which amounts to about US\$2.88 million for the 12 vessels monthly. The PPMC spends annually US\$34.56million on coastal lifting out of which about US\$32.67 million is repatriated out of this country annually. The oil producing companies may have spent about US\$20 billion to work their various offshore fields this year. The estimated budget of the maritime (shipping) component of this expenditure is about 10% which is about US\$2 billion a year. Over 75% (US\$1.5 billion) of this revenue is repatriated offshore annually because Nigerians do not own, operate and man the offshore vessels and services supporting offshore oil operations. This represents what Nigerians stand to earn if a cabotage regime is enacted and enforced in Nigeria. "

In the same vein President Bush in his 2002 National Maritime Day speech noted that ¹³America's waterborne domestic trade totals one billion tons a year and emphasized the importance of cabotage to the nation's economic well being and national defence capabilities.

All this goes on to show that cabotage is a very important subject. Cabotage is followed through the use of the internationally recognized waiver system. The waiver principle is generally based on any or all of the following: Non- availability, Reciprocity or Bilateral agreement

1.2 Role of the various international Organisations:

In this regard it is vital to know the role of the various international organisations which discuss the different maritime services. There are organizations which operate at the global level, regional level etc.

One of the major international trade organisations having a major impact is **OECD**. The OECD adopted common shipping principles in 1987. These principles were updated in 2000. The Principles provide for firstly, maintenance of open trades and free competitive access to international shipping operations, maritime auxiliary services and multimodal transport involving a maritime legislation; secondly, coordinated response to external pressure, based on full consultations between Member countries; thirdly, involvement by Member countries to preserve free competitive access and the provision of choice to the shippers; fourthly, common approach to the application of competition policy to the liner shipping sector and lastly measures relating to safety, environment and substandard shipping.

Another important organisation is **The World Trade Organisation**.¹⁴ The WTO in general calls for liberalizing trade in services. This applies equally to maritime passenger services. Among the various reasons given some are: increased competition, lower prices, innovation, higher employment, greater transparency, and technology transfer. However most WTO countries have their own internal cabotage restrictions which makes the WTO a much less effective voice. Cabotage or coastal trade is not a negotiating topic and this means that countries are absolutely free to enact national laws on coastal trade and are under no obligations to member countries in that regard. Due to the strategic

¹³ <http://www.oecd.org/dsti/sti/transport/sea/act/principles.htm>

¹⁴ http://www.wto.org/english/tratop_e/serv_e/gats_factsheet3_e.htm

importance of cabotage in national economies the bastions of free trade in the WTO do not wish to liberalize that sector and have not included it under WTO negotiations.

Currently about forty-seven countries have some form of cabotage laws in their legislation. Among them are major industrialized countries including: United States (Merchant Marine Act of 1920 popularly known as "the Jones Act"; Canada (the Coasting Trade Act of Canada); Germany (the Coastal Navigation Legislation); Spain (Law 27/1992 of 24th November on State Ports and the Merchant Marine) France; Italy; Norway, Finland. Developing countries with cabotage regimes include Brazil, Mexico, Malaysia and Nigeria amongst others. The United Kingdom does not have a national cabotage law but the stringent domestic regulations and requirements effectively bars participation from others.

1.3 A brief history of the WTO Negotiation is given hereunder:

By the early 1980s the United States started pressing for a multilateral agreement concerning trade in services. These efforts lead to GATS being implemented. However negotiations to establish a specific GATS annex concerning maritime services failed. The GATS agreement accepted was a soft one based on the positive list approach. Generally speaking, a positive list approach allows member countries to affirmatively list those service sectors which will receive national treatment, as opposed to the negative list approach which requires the listing of sectors that are to be excepted from national treatment.¹⁵ Doubts were however raised over the suitability of applying GATS to the transportation industry. One of the major countries to raise concern over the topic was USA. United States¹⁶ raised concern over the application of MFN and national treatment to transport services. GATS multilateral approach to liberalization versus more reciprocal type negotiations in the transport area proved to be contentious issue. The general lack of consensus laid to the view that maritime and air transport sector should be separated from the GATS negotiation and dealt with separately.¹⁷ This laid to the meeting of a separate working group on maritime transport on July 1990.¹⁸ A second meeting was held on September 24-28, 1990. A general consensus was developed that a separate annex on maritime transport was needed.¹⁹

¹⁵ John H. Jackson, *International Competition in Services: A Constitutional Framework* 4 (1988) (citing GATT Ministerial Declaration, GATT Press Release GATT/1396, Sept. 25, 1986).

¹⁶ *Negotiations Intensify as Groups Get Down Detailing Drafting*, NUR 041 (Oct. 9, 1990).

¹⁷ As reported by *The Economist* in September 2000

¹⁸ The working group on maritime transport would meet on 2-3 July 1990 and be chaired by Mr. W. Hoffman from Germany.

¹⁹ *Negotiations Intensify as Groups Get Down to Detailed Drafting*, supra note 16

At the end of 1991 informal discussions were initiated by interested participants in the maritime negotiations "which aimed at securing liberalization commitments by a 'critical mass' of countries."²⁰ However "some participants felt that notwithstanding the commitments offered by a significant number of countries, further negotiations were needed in order to ensure higher levels of liberalization in the sector."²¹ As a result, during the Ministerial Meeting at Marrakesh in April 1994, the negotiations concerning the maritime sector were extended beyond the close of the Uruguay Round, as represented by the inclusion of the Decision on Negotiations on Maritime Transport Services and the Annex on Negotiations on Maritime Transport Services in the Final Act.²²

The formal negotiations and informal discussions of the Uruguay Round were not for naught since some headway was made. Specifically, it was agreed that the scope of any ultimate annex would address at least three pillars of the maritime sector:²³ (1) "the supply of international shipping services," (2) "the supply of auxiliary services," and (3) "the access to and use of port facilities."

At the end of the Uruguay Round, thirty countries had maritime transport commitments in their commitment schedules and twenty-one had affirmatively opted to go ahead and list MFN exemptions in the sector, despite the fact that the requirement to list such exemptions was suspended until implementation of the negotiation results.²⁴

The Negotiating Group on Maritime Services established by the Ministers at Marrakesh came to the understanding that there should be a break in the negotiations on maritime transport, which should not resume again until the 2000 services negotiations round.²⁵

In October 2000, the European Communities, Norway, and several Asian Countries called upon the other WTO members "to express their views" on the negotiations on maritime transport services.²⁶ Since this call was made, negotiating positions have been communicated by the European

²⁰ Negotiations on Maritime Transport Services

²¹ Negotiations on Maritime Transport Services, *supra* note 20, P2.

²² See Final Act

²³ See Decision on Maritime Transport Services, *supra* note 74;

²⁴ GATT Secretariat, Negotiations on Maritime Transport Services, TS/NGMTS/W/1, P2 (May 2, 1994) [hereinafter Negotiations on Maritime Transport Services]

²⁵ John R. Schmerz & Mike Meier, WTO Announces Suspension of Global Maritime Transportation Negotiations, 2 Int'l J. L. Update 95 (1996) (legal brief)

²⁶ Joint Statement from the European Communities and Their Member States; Hong Kong, China; Japan; Republic of Korea; Norway and Singapore: The Negotiations on Maritime Transport Services, S/CSS/W/8, P5 (Oct. 6, 2000).

Communities and their Member States,²⁷ the Republic of Korea,²⁸ Australia,²⁹ Colombia,³⁰ and Japan.³¹ These proposals are general, as is to be expected in the early stages of a new round of negotiations. The proposals do, however, generally recognize the need for broader discussions on the issues surrounding multimodal transport³² and open the door for approaching the negotiations with new scheduling approaches.³³

The United States set out its overall position on the maritime transport sector by communicating a written response to the Background Note prepared by the WTO Secretariat on Maritime Transport Services.³⁴ Setting the tone for future negotiations, the United States wrote: Increased privatization, competition within and deregulation of transportation services sectors provides a good foundation for improved market access and national treatment commitments from WTO Members, including for Mode 3-- establishment of commercial presence, Mode 1--cross-border and Mode 2—consumption abroad. Effective market access in this sector also must include access to and use of ancillary services and multimodal transport services. Thus, the United States continues with its aim of seeking large-scale liberalization and deregulation.

The Negotiations Focused on Three-Pillars of the Maritime Transport Sector:-

1. First Pillar--International Shipping/Ocean Transport

In this regard The Secretariat observed: There are currently 29 WTO Members who have commitments in international shipping services. Of these 29 Members, 21 include both freight and passenger transportation services, five only freight services and three only passenger services. The

²⁷ See Communication from the European Communities and their Member States--GATS 2000: Transport Services, S/CSS/W/41 (Dec. 22, 2000).

²⁸ See Communication from the Republic of Korea--Negotiating Proposal for Maritime Transport Services, S/CSS/W/87 (May 11, 2001).

²⁹ See Communication from Australia--Negotiating Proposal for Maritime Transport Services, S/CSS/W/111 (Oct. 1, 2001).

³⁰ See Communication from Colombia--Maritime Transport Services, S/CSS/W/123 (Nov. 27, 2001).

³¹ See Maritime Transport Services: Background Note by the Secretariat, S/C/W/62, P38 (Nov. 16, 1998) (emphasis added).

³² See Proposal by Japan on the Negotiations on Trade in Services, available at <http://www.mofa.go.jp/policy/economy/wto/propos0012.html> (last visited Nov. 1, 2002).

³³ See, e.g., Communication from Australia--Negotiating Proposal for Maritime Transport Services, S/CSS/W/111, P5 (Oct. 1, 2001)

³⁴ See Communication from the United States--Transportation Services, S/C/W/71 (Nov. 24, 1988).

most important limitations include foreign equity ceilings, nationality requirements for ownership and registration of vessels under the national flag, requirement to appoint a local agent, limitations on government owned cargoes, discriminatory taxation and discriminatory port charges.³⁵ The limitations taken by those countries making commitments are extensive in scope and show the uniform lack of liberalization that must be overcome. Discussions regarding cabotage ended with the understanding that cabotage rights should be reserved to the countries. No substantial efforts were made to open domestic shipping markets during the negotiations.³⁶ The countries agreed early in their post Uruguay Round discussions that cabotage would be excluded from the negotiations.

2. Second Pillar--Maritime Auxiliary Services

In the second pillar of maritime auxiliary services, there have been commitments with regard to "cargo handling, storage and warehousing, freight agency and freight forwarding, pre-shipment inspection, custom clearance, container station and depot."³⁷

With the presence of domestic protectionist pressures being a given, the Development Research Group of the World Bank has identified two general aspects of achieving additional liberalization of the second pillar: "One is to ensure that foreign ships serving the domestic market obtain non-discriminatory access to such services. The second is to allow competition, domestic and foreign, in the supply of the service itself."³⁸

3. Third Pillar--Access to and Use of Port Facilities

To date, six members have made commitments in the third pillar that include towing, pushing, tug assistance, port dredging, and port captains' services; eleven members "have scheduled additional commitments relating to access for consumers of port services on . . . non-discriminatory and

³⁵ See Communication from the United States--Transportation Services, S/C/W/71, at 5 (Nov. 24, 1998).

³⁶ It was not only recognized with regard to services that national cabotage provisions would be untouched. Paragraph 3(a) of GATT 1994 reads, in part: The provisions of Part II of GATT 1994 shall not apply to measures taken by a Member under specific mandatory legislation, enacted by that Member before it became a contracting party to GATT 1947, that prohibits 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. GATT 1994, Para. 3(a). If a country utilized the exemption, the WTO Ministerial Conference was charged to review the protected national legislation five years after entry into force of the WTO Agreement and again every two years thereafter "for the purpose of examining whether the conditions which created the need for the exemption still prevail."

³⁷ See Maritime Transport Services: Background Note by the Secretariat, S/C/W/62, P38 (Nov. 16, 1998).

³⁸ Carsten Fink, Aaditya Mattoo & Ileana Cristina Neagu, Trade in International Maritime Services: How Much Does Policy Matter?, World Bank Econ. Rev., June 2002, at 90

reasonable terms;" and ten members have made commitments addressing the maintenance and repair of vessels.³⁹

4. Fourth Pillar--Multimodal Transport Services

At the end of the Uruguay Round, three pillars had been identified as areas of focus concerning the scheduling of commitments. By the conclusion of the 1994-1996 negotiating round, however, growing numbers of voices could be heard requesting the development of a fourth pillar addressing multimodal transport services.⁴⁰ The Report of the Negotiating Group on Maritime Transport Services issued at the conclusion of its meetings stated:⁴¹ Among issues discussed were technical matters relating to the scheduling of commitments on international shipping, auxiliary services, access to and use of port facilities and multimodal transport services. In relation to the issue of multimodal services, modifications of the draft schedule, including a number of alternative approaches which would enable participants to schedule commitments in this area, were considered. The focus on multimodal transport issues appears to have been artfully dodged by some delegations during the 1994-1996 round, but it is likely that the issue will resurface during the 2000 round of services negotiations.

The United States was tagged as the "spoiler" of the 1994-96 negotiating efforts.⁴² The U.S. delegation took the position that greater overall liberalization needed to take place (as opposed to maintenance of the status quo) before it would agree to make maritime concessions.⁴³ A particular goal of the United States remains the opening of port and auxiliary services to its service providers.⁴⁴ The European Communities has an interest in avoiding the liberalization of international shipping activities addressing liner conferences. Developing countries, however, would like to see such conferences dismantled to open up competition opportunities for their service providers.⁴⁵

The European Communities seems to be setting the stage to try and crack the United States' strict

³⁹ See Maritime Transport Services: Background Note by the Secretariat, S/C/W/62, and P.38 (Nov. 16, 1998).

⁴⁰ Negotiating Group on Maritime Transport Services, Report of the Negotiating Group on Maritime Transport Services, S/NGMTS/16, P4 (July 3, 1996).

⁴¹ Id.

⁴² GATT Uruguay Round, *supra* note 12, at 817.

⁴³ See IV The GATT Uruguay Round: A Negotiating History (1986-1994), at 817 (Terence P. Stewart ed., 1999).

⁴⁴ Id.

⁴⁵ See *id.*

cabotage regime at a later date.⁴⁶ In December 2000, the European Communities proposed that shipping companies be permitted to move empty containers from one U.S. port to another and that laws addressing the sea-going portion of multi-modal transport activities be liberalized.

Japan has taken a position contrary to the United States concerning the liberalization of port and auxiliary services.⁴⁷ Moreover, liberalization in the developing fourth pillar of multimodal transport appears to be promoted by Australia, the United States, and the European Communities, while being opposed by Japan and several Asian countries.⁴⁸ Thus the future negotiations are very instrumental in determination of the opening up of the domestic shore lines. As mentioned above the various stakeholders have come a long way from the initial deadlock faced during negotiations. However this is one area where we can expect a lot of activities in the coming times.

UNCLOS, generally regarded as the grundnorm on laws of the sea in Arts 56 and 60, recognizes and preserves the right of member states to make laws regulating activities within their territorial and exclusive economic zone, and specifically mentions artificial installations. This is of particular interest to those who argue that cabotage law should not extend to offshore oil installations.

1.4: Future:

The future discussions relating to cabotage are very interesting. One of the major reasons for this is the ongoing debate over the nature of the cabotage laws. While one group terms it as protective, others are citing it as damaging. Cabotage law in whatever form, whether liberal or strict is essentially protectionist. Some people therefore find it difficult to reconcile cabotage policy with the current worldwide trend of liberalization and opening up markets to foreign investors. In this regard the position in two countries is covered i.e., USA and India.

1.5 Cabotage Regulations in USA:

In USA Against Cabotage group feel that Cabotage laws are restricting cruise ships companies, and causing ports in the United States to lose cruise business. The cruise industry is of great importance to the United States. The cruise industry generates millions of dollars in revenues and has created

⁴⁶ See EU, U.S. WTO Services Proposals Show Commonalities, Differences, Inside US Trade, Jan. 26, 2001, available at www.insidetrade.com (last visited Nov. 1, 2002) (discussing services proposals made by the European Union in December 2000).

⁴⁷ See id.

⁴⁸ The United States appears unwilling to bend on the issue of cabotage due to pressures from domestic shipping interests. See GATT Uruguay Round, *supra* note 172, at 2364.

thousands of jobs. Because of this economic benefit, many U.S. port cities are advocating a change in U.S. cabotage laws. These ports claim that only a handful of U.S. ports are receiving the benefits of the cruise visits, and that if cabotage laws were changed, other ports may be visited as well. U.S. cabotage laws such as the Jones Act and the Passenger Vessel Services Act are considered the cause of this loss in revenue and reform of these laws could help change the current situation for the better.

The fact is that over 90% of all cruise passengers are U.S. citizens.⁴⁹ Foreign flagged cruise ships dominate the cruise industry in the United States, and there approximately only 13 U.S. flagged cruise ships are remaining. Despite the economic benefits that foreign flagged cruise ship visits bring, there are laws which restrict their movements. Cabotage laws restrict the most competitive cruise ships, the foreign flagged cruise ships, in their coastwise movement between U.S. ports. Cabotage laws also restrict the most legally mobile ships, the U.S. flagged cruise ships to high cost requirements on shipbuilding and crewing.⁵⁰ These costly shipbuilding and crewing requirements render existing U.S. flagged cruise ships uncompetitive, and create a strong disincentive to flag U.S. The U.S. flagged cruise ships are unable to compete with the foreign flagged cruise ships, because building requirements and crewing requirements have increased costs considerably. They feel Cabotage laws have seriously hampered the movement of the most competitive foreign flagged cruise ships, contributed to the demise of the U.S. flag, and caused a loss of potential economic benefits to be gained from the visits of these cruise ships. Reform of these laws is the best solution to reverse this trend, specifically reform which enhances the competitiveness by: reducing those costs which have been imposed on the U.S flag, and allowing Foreign flagged vessels more freedom of movement. It is only through a reform of the Jones Act and the Passenger Vessel Services Act that U.S. port cities will see more cruise visits and receive greater economic benefit from them.⁵¹

The Pro-cabotage interests include: the unions whose jobs depend on the U.S. flag business; the U.S. flagged ship operators themselves, who wish to maintain restrictions on the coastwise movement of foreign flagged operators; and Defense interests who wish to maintain shipbuilding skills, ships, and crew for the ready reserve. They think the Cabotage laws to be necessary to protect the U.S. domestic shipping market and the jobs associated with the U.S. shipping industry from low cost foreign competition. According to them the policy behind cabotage laws is to protect the U.S. shipping industry so that there exists a *ready reserve* of capable shipbuilders, U.S. ships, and capable

⁴⁹ Quote from the International Council of Cruise Lines

⁵⁰ Maritime Cabotage Task Force Post Hearing Brief on Cabotage Restrictions.

⁵¹ M.A. Project, Monterey Institute of International Studies Kathleen Magee U.S. Cabotage Laws April 2002

captains and crew for use in times of war. The theory behind cabotage laws is that that restriction on ship coastwise movement; ownership; crewing; and shipbuilding, will help protect this ready reserve.⁵²

1.6 Cabotage Regulations in India:

India is a significant maritime nation . Carriage by sea constitutes approximately 95% of India's international trade by volume and 68% by value. India has the largest merchant shipping fleet amongst the developing countries.

A new shipping policy was initiated in 1990-91 to promote Indian shipping which reserved 100% coastal trade for Indian flag bearing ships. Under Indian Cabotage Regulations provided under The Merchant Shipping Act, (1958), movement of coastal trade is reserved for Indian flag vessels and operation of foreign vessels in Indian waters is restricted. Under the existing exchange control laws, foreign entities can invest up to 100% in Indian ship owning and ship-operating companies. Such companies enjoy privileges granted to any Indian company and may acquire ships flying the Indian flag with 100% overseas debt/equity finance. Indian regulations require all Indian ships and foreign ships chartered by Indian ship-owners, to acquire trading licenses from the Director General of Shipping, prior to proceeding to sea. Although foreign vessels are permitted to ply in the coastal trade of India under license, in practical terms, attaining such a license is difficult in as much the foreign companies are required to establish non-availability of Indian Flag vessels that meet with the specifications of the foreign vessels seeking the license. Moreover the license is of a temporary nature and upon renewal, similar compliances may be required.

Subsequent to the adoption of the Tenth 5 year plan in 2003, the DG announced a five year relaxation of India's cabotage regulation. To promote cruise tourism, in the absence of Indian cruise ships, the shipping Ministry has permitted foreign flag bearing cruise vessels to call at more than one Indian port to sail without obtaining permits or licenses from the DG. With relaxation in Cabotage laws for container vessels and lash barges to attract foreign mainline vessels and decontrol of freight and passenger fares to promote coastal trade, the stringent Cabotage regulations are now being liberalized.

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Both in case of India and USA debates are going on about relaxation of the cabotage laws. There are

⁵² <http://www.sice.oas.org/dispute/wto/tract04e.asp>

⁵³ Mulla & Mulla & Craigie Blunt & Caroe India: Cabotage Regulations In India 23 August 2007

concerns over the complete relaxation or repeal of such regulations threatening domestic tonnage by opening the door for carriage of coastal cargo by foreign flag vessel.

1.7 Conclusion: Cabotage laws are the foundation of domestic maritime industry everywhere. It could evolve into the largest and most vital sector in a country's merchant marine. Cabotage when properly implemented will provide safe, reliable and cost-effective transportation options for a country's shippers, efficient maritime infrastructure and of course a vital role in the nation's economic and national security.