

■ 論 文 ■

## Maritime Transport Services Liberalization: Directions for Northeast Asia

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Key Words: Maritime transport, liberalization, GATS, Regional trading bloc

### ABSTRACT

Competitive and reliable maritime transport services benefit the economy as a whole, and are key efficiency factors for the production of both goods and services. Although maritime transport sector is very liberalized compared to many other service sectors, certain obstacles must be overcome before full liberalization of the maritime transport can be realized. Particularly, maritime transport services in Northeast Asia are regulated by a complicated and outdated system. To remove these barriers, two approaches can be used: a regional trading arrangement approach and a multilateral approach via WTO. However, multilateral efforts are not likely to be successful in achieving any concrete progress towards maritime transport liberalization in the short- to medium-term in Northeast Asia.

Consequently, it may be the best to take the following two progressive approaches and to make them work towards liberalization of the maritime transport market: a bilateral approach and a trilateral approach. A gradual process of liberalization would expand the market, help operators achieve economies of scale, promote the international division of labor and specialization, enhance the effective management of shipping services, and promote the long-term interests and welfare of the user by improving service quality and diversifying services. A liberalized and integrated maritime transport market in Northeast Asia should achieve both of these long-run policy objectives by benefiting both the transport service users and the transport service providers. In order to move the maritime transport liberalization programs as quickly as possible, it is desirable to establish a "Regional Maritime Transport Liberalization Committee." We suggest it to be a Tripartite (China, Japan and Korea) Committee initially, which can later expand its membership to include other Northeast Asian countries.

## **I. Introduction**

In both the early European Community (EC) and the North America Free Trade Agreement (NAFTA), the central thrust of transport policy was to extend competition rules in the transport sector to enable the free circulation of services, thereby fostering economic and social progress. The free circulation of transport service means the creation of a common transport system, which promotes the realization of a common transport market and allows transport users the choice of transport modes through competition between both different and like modes of transport in a deregulated and liberalized market. Such an arrangement will not only serve consumer interests but ensure a strong and viable industry within the region.

The World Trade Organization (WTO) was created to deal with market liberalization and complicated trade issues which have a huge impact within a borderless economy. The ultimate goal of the WTO is to achieve unrestricted, global access to every market. However, complete worldwide liberalization may be realized only in the long run. The first step in achieving the ultimate goal of multilateral liberalization is to abolish trade barriers regionally through the formation of a regional trading bloc. Although regional trading arrangements are presently favored worldwide, this trend may not be compatible with nondiscriminatory global liberalization, which is enforced by the WTO and other institutions, because it sets up barriers against outsiders. However, Article XXIV of the General Agreement on Tariffs and Trade (GATT) allowed for a regional trading arrangement subject to several requirements. Consequently, as an alternative to the WTO multilateral framework, it becomes clear that regional cooperation or integration could potentially solve a variety of problems, in addition to expanding intra-regional trade.

It is well known that competitive and reliable maritime transport services benefit the economy as a whole, and are key efficiency factors for the production of both goods and services. Maritime transport carries eighty percent of world trade in terms of volume. Maritime transport is thus an important facilitator of world trade. In fact, its role becomes even more apparent and crucial in an expanded and diversified world trade system.

The principle of “freedom of the seas” expresses the idea that maritime transport is, and should be, an international industry. The 1998 survey by the

WTO on member countries concluded that the maritime transport sector is “very liberalized” compared to many other service sectors. The reality, however, is that certain obstacles must be overcome before full liberalization of the industry can be realized. The international shipping market up to now has been divided by shipping consortia, the UN Liner Code,<sup>1</sup> bilateral agreements on access to cargo, and national policies of financial support and non-financial measures for domestic industries. A gradual process of liberalization would have expanded the market, helped operators achieve economies of scale, promoted the international division of labor and specialization, enhanced the effective management of shipping services, and promoted the long-term interests and welfare of the user by improving service quality and diversifying services. A liberalized and integrated maritime transport market in Northeast Asia should achieve both of these long-run policy objectives by benefiting both the transport service users and the transport service providers.

This paper is organized as follows. Following the introduction, Section II reviews the current status and future prospects for the maritime transport system in Northeast Asia, as well as restrictions surrounding the region’s maritime transport market. Section III reviews the approaches in the liberalization process through regional trade arrangements as is found in the European Union (EU) and NAFTA, as well as through the multilateral institutions such as the GATT and WTO. Section IV then suggests directions towards liberalization of maritime transport market in Northeast Asia. Section V provides concluding remarks.

## **II. Current Status of Maritime Transport in Northeast Asia**

It is widely agreed that an efficient maritime transport system plays a critical role in the economic and social development of the region. In response to the rapid increase of the intra-regional trade and movement of people due to growing interaction in Northeast Asia, it is essential to have a reliable and

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<sup>1</sup> The UN Liner Code is one approach for resolving discrimination by facilitating countries’ participation in liner shipping. It stipulates that contracting parties shall have equal rights of cargo sharing, and allows the third-party member to share 20 percent of cargo (the 40:40:20 formula). In reality, however, it has divided the international shipping market into segmented regional activities and has prevented interactive and free competition. China, Korea, Hong Kong, and Russia are contracting parties of the UN Liner Code.

efficient maritime transport system in the region, if the maximum benefits of changing global environments are to be reaped. Countries in Northeast Asia, however, differ greatly in their level of market liberalization in maritime transport. The existing maritime transport system in Northeast Asia is unable to accommodate the growing demands placed on it because of a high degree of fragmentation in the market and a great deal of variance in the progress of market liberalization.

### **1. Intra-Regional Trade and Investment**

Any discussion regarding the future direction of the regional transportation system should begin with a clear understanding of trends in the development of trade and investment. In the 1990's, Northeast Asia has seen its trade volume with countries in the region increase by leaps and bounds as a result of deepening economic interaction. Most of the region's trade, with the exception of Japan and Russia's, is intra-regional, though Japan's share of intra-regional trade has been increasing in recent years. This recent increase in intra-regional trade reflects Japan's transition from its traditional economic dependence on the U.S. and Europe, to an increasingly inter-dependent relationship with the countries of this region. The most spectacular growth in bilateral trade has occurred between China and Korea. Sino-Korea trade increased from \$1 billion in 1986 to \$22 billion in 1997. A recent study forecast that both inter-regional trade and intra-regional trade in Northeast Asia will continue to increase at a similar pace in the next century – despite the recent financial crisis – thanks to the region's excellent human capital resources, high savings and investment rates, and continued market liberalization (Kim, 1998).

Increased intra-regional interaction in Northeast Asia should translate into increased trade volume and transportation demand and greater prosperity and opportunities for the countries of the region. Therefore, transportation costs may be the most critical factor determining the volume of bilateral trade, given the comparative advantages of the two countries. The concept of a 'natural' trading bloc, which refers to the strong tendency of countries to trade with their geographical neighbors, reflects this important economic role of transportation cost.<sup>2</sup> In particular, transportation delays resulting from a shortage in

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<sup>2</sup> Total logistics costs covering the entire logistics and transportation chain may account for a substantial portion, up to 25 percent, of sales.

transportation capacity can, if prohibitively high, reduce a country's competitiveness.

## 2. Growth in Maritime Transport

Despite the fact that not all countries in Northeast Asia have formal diplomatic relationships, maritime transport has played the most important role in facilitating the movement of people and goods between countries in the region. Until the late 1980's, when the Cold War came to an end, many countries in Northeast Asia had either no regularly scheduled transport service or very limited service with each other. In response to the increasing movement of people and goods during the 1990's, however, regularly scheduled transport services between Northeast Asian countries expanded dramatically, with the exception of services to North Korea.

From 1985 to 1996, the volume of container cargo in the world increased from 56 million twenty-equivalent units (TEU) to 147 million TEU, an annual growth rate of 9.2 percent. In particular, the growth rate in Northeast Asian ports recorded 12.6 percent per annum. Furthermore, excluding Japan, the annual growth rate in the region was 17.1 percent.

Though some observers predict a slowdown in the rate of container traffic growth in the future, it is widely accepted that the growth rates of world container traffic during the coming decade will be very similar to those of this past decade. In particular, because of sustained economic growth and trade liberalization, Northeast Asia is expected to grow somewhat faster than it did in the 1990's, which should translate into increased container flows. In a recently published study on Asian container trade, it was forecast that despite the Asian financial crisis, Asian container volume will continue to exceed the world average by a considerable margin (KMI and ESCAP, 1997). Consequently, Northeast Asia's share of containerized exports is expected to rise from 32 percent of the world total in 1996, to 36 percent in 2006; its share of containerized imports is expected to rise by a similar rate, from 30 percent to 34 percent.

Over the past few years, major carriers in Northeast Asia have focused their efforts on creating and strengthening global services networks to attract more traffic in increasingly competitive international markets. Since the Northeast Asian shipping market is the largest in the world, far surpassing Europe's share of

global shipping, Northeast Asian container lines lead the world-shipping scene. As of 1999, five Northeast Asian container lines were ranked in the global Top 10, and ten were ranked in the Top 20.

Due to the rapid growth of intra-regional trade and ongoing structural changes in maritime transport, we will witness growth in the significance of short sea shipping (intra-regional shipping), which has not been given adequate recognition as a critical part of the Northeast Asian transportation network. The growth of short sea shipping will replace traditional feeder shipping and develop into short sea liner and bulk distribution and collection systems. Therefore, it is doubtful that a central regional hub and spoke system will develop to serve the whole region. Rather, the conditions in the Yellow Sea and the Korean East Sea (Sea of Japan) may encourage circular routing systems or backtracking systems (Jun, 1999a).

### **3. Port and Intermodal Transport**

The growing long-term importance of intra-regional trade also affects the prospects of the region's seaports. Intra-regional trade will not be largely served by a limited number of major or hub ports, but will be served by a logical network of regional ports based on logistics and cost considerations. Since intra-regional trade in Northeast Asia is relatively short in distance (200-1600 miles), the strategic location of a port is more important than the port's capacity to accommodate large vessels or handle large volumes of cargo. Therefore, the optimum size for such distances is only 500-2300 TEU for containerships, and 5000-45000 dead weight tons (DWT) for dry and liquid bulk carriers (Frankel, 1998).

In 1980, Northeast Asian container ports handled only 7 million TEU. By 1990, this had grown to 22 million, and by 1997, 48 million. Northeast Asian ports now account for 27 percent of world container moves, compared with 20 percent back in 1980. Reflecting this growth, three of the world's five largest container ports and 8 of the world's top 20 container ports are located in Northeast Asia. Given the fact that maritime transport will continue to be the foundation of economic geography in this region, ports should be receive priority over other transport infrastructure. However, rapid growth of seaborne traffic in Northeast Asia led many ports in the region to demand a substantial increase in handling

capacity, which has resulted in serious capacity constraints in spite of continued port expansion.

Until recently, political problems have hindered intra-regional trade by sea-land intermodal transport in this region.<sup>3</sup> Consequently, intermodal transport has not been recognized for its rightful significance as being a core link in logistics chains. Due to the effects of technical and operational changes in the transport market, the regional transport market of the future will be dominated by intermodal transport, where success depends on quick landside movement. Congestion problems have also arisen on the landside of Northeast Asian ports due to inadequate access and insufficient infrastructure, rail and road access, and rail and road system capacity.<sup>4</sup>

However, it is clear that the transition from a conventional segmented, marine-based transport system to an intermodal transport system arising from enhanced logistics requirements in the region will bring great, visible changes to the character of the transport system in the near future. Previously, ports in the region have kept identifiable natural hinterlands, delineated by political borders and inland transport networks, which dictated cargo flow within the respective countries. As economic relations deepen and the intermodal transport system develops within the region, however, shippers all over the region will be able to use only those ports and routes that offer the lowest logistics costs and fastest time. A consequence of the above developments would be an increase in the dynamics of competition among intermodal networks at the national and regional levels. This would enable shippers to enjoy lower transport costs and transit time savings.

To cope with the changing environment, major institutional changes are required with respect to the structurally complicated array of laws and regulations governing intermodal transport. In this regard, cooperation among countries in the region is required to address the many barriers to intermodal transport in Northeast Asia and to recommend a range of action programs. To improve the

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3 Intermodal transport can be best defined as the movement of goods door-to-door using at least two different modes in an integrated manner. Intermodality is an indicator of the integration level of the transport system, and is along with interoperability and interconnectivity, one of the basic requirements of an integrated transport system.

4 Although lack of adequate road infrastructure is a major constraint on the cargo flow through the port in China, many other countries face the same problem.

efficiency of intermodal transport, ensuring uniformity in intermodal liability rules and human resource development should be given high priority as well.

#### **4. Restrictions in Maritime Transport Market**

Maritime transport within Northeast Asia is still, however, far from being free and efficient. A few of the region's countries still exert strict regulations and intervene in the market to protect their shipping industry, while promoting it at the same time. Many countries in the region promote their national shipping carriers with the primary objective of minimizing the nation's dependence on foreign shipping and serving as a hedge against "the arbitrary freight rate increases" imposed by powerful major global carriers. In this vein, foreign vessels are often prohibited from entering certain routes, and their access to local cargos are blocked or discriminated. A few of these examples are briefly examined below.

A range of restrictions - from limits on new entry and pricing, to limits on what carriers can and cannot do on the docks - impair competition at Japanese ports. The prior consultation system, restrictive government stevedoring licensing requirements, and Sunday work restrictions are practices that have burdened foreign carriers for years. These restrictions hinder access to Japanese ports for foreign carriers, and have thus resulted in U.S. Federal Maritime Commission (FMC) threats to close U.S. harbors to Japanese container vessels.

China has also been accused of erecting barriers limiting foreign carriers' port access, branch office openings, and inland transport operations in China. Very limited numbers of foreign shipping companies have licenses to engage in basic shipping activities in China. Foreign shipping companies operating in China claim that they are subjected to a number of restrictions imposed by undue governmental regulations in the Chinese shipping market. These regulations both restrict operations of foreign lines and create a complex and uncertain environment in which to conduct commercial activity.

Until recently, Korea has also adopted two distinct systems of cargo reservation to protect domestic shipping firms: a waiver system and a designated cargo system. The purpose of these systems was to promote the development of the Korean shipping industry by giving priority to Korean flag vessels in transporting liner cargo (in the waiver system) and bulk cargo (in the designated



cargo system). As the operation of Korean shipping firms became globalized, the waiver system continued to diminish and was eventually only applied to the Korea-Japan route in 1992. It was finally eliminated in 1995. In January 1999, after Korea became a member of the Organization for Economic Cooperation and Development (OECD), the Korean government abolished the designated cargo system. Although Korea has been more responsive to the trends toward liberalization and globalization in the maritime transport sector than other countries in the region, it has still been requested to further liberalize its maritime transport market.

Another prominent barrier to free and open access to maritime transport services in Northeast Asia has been the negotiation and conclusion of bilateral shipping agreements. In most cases, shipping routes within Northeast Asian region are still regulated by bilateral agreements between the countries concerned. This results in subdivided and, therefore, inefficient and small markets. Consequently, freight rates in intra-regional trade routes are significantly higher than those of inter-regional trade routes (Jun, 1999). For example, the freight rate for the Pusan-Vostochny route (511 miles) is US\$1,100 per TEU, whereas along the Pusan-Rajin route (446 miles), where 99% percent of cargo is transit cargo to and from Northeast China, the rate is US\$900 per TEU. These freight rates are significantly higher than the ocean freight rate of US\$1,150 per TEU for the all-water service between Pusan and Rotterdam (10,812 miles). This is because transport providers that set their freight levels very high have a monopoly on both trade routes in Northeast Asia (Jun, 1996b).

### **III. Approaches to Maritime Transport Market Liberalization**

As discussed earlier, maritime transport services in Northeast Asia is regulated by a complicated and outdated system, which governs many aspects of the maritime transport market. To remove these barriers, two approaches can be used. First, a regional trading arrangement approach, the effectiveness of which can be evaluated from experiences in the liberalized transport markets of EU and NAFTA. Second, a multilateral approach via WTO, which may confer the greatest

benefits from the perspective of economic theory. Below, we discuss developments of liberalization process via each of the above approaches.

## **1. Regional Trading Bloc Approach**

### **European Union**

As an alternative to transport market liberalization within the framework of the WTO multilateral framework, countries of a particular region can form their own regional arrangement. This kind of regional arrangement would reduce the transaction costs associated with reaching a complete multilateral agreement.

The European Community took a major step with the Single Market initiative, which was adopted in 1987 and took effect in 1992. The purpose of the ambitious plan was to turn a free trade area into a true common market. The continued expansion of the EC, now the European Union, in terms of scope, depth, and geographical area, is a truly historic achievement.<sup>5</sup> This success was demonstrative, and undoubtedly had the effect of encouraging emulation in other parts of the world, in the form of regional initiatives.

The EU Treaty reflects the specific challenges faced in opening transport market to region-wide competition, by creating, in Article 70, the Common Transport Policy. The EU Member States recognized that creating "internal transport markets," liberalization, and attaining public service objectives, are all central parts of what is, in fact, an integrated policy approach. Thus, the Community has taken a gradual approach to liberalizing transport markets, in order to ensure that security standards are met, and to guarantee essential public service objectives. Considerable progress in maritime transport has been made in opening markets to EU-wide competition.

Liberalization in maritime transport is complete in international transport as between Member States. EU legislation<sup>6</sup> liberalized maritime cabotage services as of January 1, 1993, although temporary exemptions were granted to five

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<sup>5</sup> For the political, social, and economic implications of the European integration process and their consequences on the transport sector, see Rothengatter(1998).

<sup>6</sup> Council Regulation (EEC) 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within a Member State (maritime cabotage).

countries. The last sector to be liberalized in these Member States was island cabotage services, which were opened on January 1, 1999.<sup>7</sup> In the port sector, future EU legislation will tackle the problem of market access and financing.

### NAFTA

In contrast to Europe's move toward a regional trading arrangement, the United States emphasized multilateral liberalization through the GATT. However, the U.S. changed its position from multilateralism in the 1990s, based on the notion that "it is important that the march toward removing trade barriers—unilaterally, regionally, and multilaterally—continues." In other words, the U.S. considered any progress toward removing trade barriers as progress, and this has remained its policy even after the successful conclusion and implementation of the Uruguay Round (UR) and the establishment of the WTO.

As NAFTA went into effect in January 1994, it was conceived that NAFTA would create a new North American market, strengthen the economy of each country, and encourage the development of a seamless North American transportation system that would reduce the logistics cost of locally made goods even further. The formation of NAFTA helped regional companies to take advantage of reduced volumes of inventory in-transit due to shorter distances, reduced transportation costs, especially for high-value goods, and reduced overall cost of product acquisition, including administrative costs.<sup>8</sup>

In all three NAFTA countries, the five years since implementation brought a substantial change to logistics and transportation services. NAFTA has been successful in fulfilling its promise in the following areas: promoting fair competition and equal treatment between competitors in all three countries; developing legal frameworks that protect cross-border investments; creating procedures for implementing and administering NAFTA and for resolving related disputes; and establishing means for continuing trilateral cooperation in areas covered by NAFTA. However, in some areas affecting freight transportation, the progress has been less than expected. The elimination of barriers to cross-border

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<sup>7</sup> Exception was made to two sectors in Greece which enjoy an additional temporary exemption until 1 January 2004.

<sup>8</sup> According to U.S. government statistics, from 1993 to 1997, trade between the U.S. and Canada increased by more than 50 percent, between the U.S. and Mexico by more than 90 percent, and between Canada and Mexico by more than 80 percent (Gooley, 1998).

trade in goods and services continues to slow, owing to inefficient border crossing procedures and other restrictive measures hindering trade liberalization. Cross-border investments also have not been fully liberalized to take advantage of new opportunities. In spite of this uneven progress in facilitating the movement of cargo and passenger traffic flows, NAFTA has opened new opportunities for transport service providers.<sup>9</sup>

With regard to maritime transport services, the US has taken a continuous and steady position in the direction of liberalization through the Shipping Act of 1984 and the Ocean Shipping Reform Act of 1997. The Reform Act was intended to further liberalize the US maritime sector by providing for an ordinary transition to a more deregulated ocean-shipping environment. Although this Act is a unilateral effort that can largely influence the global relationship between shippers and carriers and overturn traditional practices in maritime sector, it has garnered the support of shippers in both advanced and developing countries.

## **2. Multilateral Approach**

The service sector poses a special challenge for the liberalization process, because of the constraints that have made it more difficult to achieve a “big bang outcome.” Liberalization of the transport services is likely to be a by-product of more general liberalization policies adopted by countries in the region. Liberalization in transport services means reduced government intervention in the affairs of an industry, which results in competition between operators of the same mode or interface.

A nondiscriminatory global trading regime, enforced by an institution such as the WTO, is an international public good. The WTO came into being in 1995, when it succeeded the GATT, which was established in 1947 in the wake of World War II. The 1986-1994 UR of the GATT led to the establishment of the WTO. The WTO is quite different from GATT in terms of its responsibilities in areas related to competition and foreign investment policy. The introduction of the General Agreement on Trade and Services (GATS), governed by the WTO, is a

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<sup>9</sup> For the development of the North American transport system and its impact on transport industry, see Heaver(1998).

powerful force pressing for the expansion of competition policies within the WTO.<sup>10</sup>

Although the UR negotiations had limited implications for the transport sector and an agreement was not reached, the UR negotiations, which lasted from 1986 to 1993, were fruitful. UR resulted in the establishment of GATS by Article 10(2), and it was agreed that the framework provisions of the GATS should be applied to maritime transport services (MTS).

Table 1 shows the new shipping requirements under GATS general principles. GATS recognizes the right of domestic regulators to impose minimum standards and conditions, including qualification requirements and procedures, technical standards, licensing and authorization.

The three most important clauses of GATS in the maritime transport sector for implementing the principle of non-discrimination are most-favored nation (MFN), national treatment (NT), and market access (MA).<sup>11</sup> Below is a review of the applications of the above principles, with notes regarding some of their implications (Choi, Kim, and Findlay, 1997).

*Most-Favored Nation:* MFN policies are trade policies based on the principle of nondiscrimination. The basic principle of MFN is that when a country extends trade concessions to one partner, it must extend them to all. This MFN clause has been incorporated in many bilateral treaties since the early 19th century. The MFN principle was built into the postwar trading system as Article I of the GATT. From the beginning, GATT allowed for a major deviation from the MFN principle. Article XXIV of GATT incorporated the possibility of regional trading arrangements. This article says that a group of countries may form a free trade

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<sup>10</sup> The GATS negotiated in the UR is the first ever set of multilateral, legally-enforceable rules covering international trade in services. Like the agreements on goods, GATS operates on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets. Unlike the agreements on goods, however, GATS has a fourth special element: lists showing where countries are temporarily not applying the "most-favored nation" principle of non-discrimination.

<sup>11</sup> Transparency principle is also introduced as a policy of new international shipping regime by framework agreement. By transparency policy, in compliance with the provision of GATS (Article III), each member country shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of the GATS.

area or customs union and drop barriers between themselves, but that it must be subject to certain requirements.<sup>12</sup>

**Table 1. New Shipping Regime Under GATS General Principles**

|  | GATS general principles  | Relevance to shipping regime  |
|--|--|---|
| MFN/Non-discrimination                           | Unconditional application  | Removal of cargo reservation and other discriminatory measures  |
| Transparency                                     | Prompt (at least by the time of enforcement) announcement of all relevant measures pertaining to/affecting the operation of GATS | Transparency in government practices in cargo preference, private agreement/measures for cargo reservation and subsidies, technical standards, and so on. |
| Increasing participation of developing countries | Promotion of service industries in developing countries  | Removal of cargo allocation in developed countries; promotion of technology transfer and application; support for staff training; investment in ships     |
| General exceptions                               | When related to national security or culture   | For example, transportation of military items   |

Source: Chia, Onyirimba and Akpan(1999).

Unconditional application of the MFN clause to the MTS could mean that all countries that exercise cargo-sharing through bilateral or multilateral agreement would be required to immediately or gradually phase out all or most of their practices, or otherwise extend cargo reservation and/or sharing privileges to other parties. As the UN Liner Code appears not to conform to the MFN principle, strict implementation of this principle may mean the end of the Code.

<sup>12</sup> The first requirement is that “substantially all” barriers among the members be removed. The second requirement is that trade barriers against non-members should not be made more restrictive than before. When the members go into the arrangement with different levels of tariffs against nonmembers, a process of averaging should be used in setting the new external tariffs. The last requirement is that subsequent progress toward economic integration be expeditious. However, no trading arrangement has ever been rejected by the GATT.

*National Treatment:* Implementation of the NT principle may bring about, at the least, the following effects:

- Under strict implementation of NT, any restrictive measures in favor of domestic shipping should either be removed or be extended to foreign shipping firms.
- The implementation of NT would also mean removal of any discriminatory charges and taxes levied against foreign-flag ships, mainly by developing countries.
- The implementation of NT and MA may also mean the entitlement of foreign ships to access and use port infrastructure and facilities. With respect to the facilities or services, foreign vessels should be treated in the same way as domestic ones, and the priority of the latter in using port facilities should be lifted.

*Market Access:* Implementation of the MA clause concerns the establishment of a commercial presence in foreign countries and the right to provide services.

- In developing countries, the establishment of commercial presence may cause severe competition between local and foreign firms. In certain cases, this may result in a complete loss of business for local companies or agencies, since they lack extensive international business networks and experience, and operate less efficiently, primarily owing to the fact that commercial presences may compete for national cargoes on behalf of the shipping companies they represent (Haralambides, 1994).

At its Ministerial Meeting in Marrakesh in April 1994, the Trade Negotiations Committee of GATT adopted the Decision on Negotiation on Maritime Transport Services, which established the Negotiating Group on Maritime Transport Services (NGMTS). The NGMTS was mandated to hold comprehensive negotiations aimed at commitments in the so-called three pillars,<sup>13</sup>

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<sup>13</sup> In the UR maritime negotiations, there was some degree of recognition of the importance of multimodal activities and discussed as a fourth pillar supplementing the model schedule, but limited to activities where a maritime leg was involved.

i.e. international shipping, auxiliary services, and freedom to use and access port services, for the purpose of eliminating restrictions within a fixed time frame.<sup>14</sup>

The NGMTS examined outstanding technical and conceptual issues, such as:

- technical matters related to the scheduling of commitments on international shipping;
- auxiliary services, freedom to use and access of to port services, and multimodal transport services; and
- alternative approaches that would enable participants to schedule commitments in this area.

At the end of June 1995, participants began submitting draft offers of commitments on MTS to serve as the basis for bilateral request/offer negotiations. During the negotiations, participants made it clear that their offers were conditional, depending on the quality and extent of the commitments made by others. Frequent rounds of bilateral negotiations were also held among participants.

As a result of the Uruguay Round and the negotiations in the Negotiating Group on Maritime Transport Services (NGMTS), the Council for Trade in Services adopted on June 28, 1996, the Decision on Maritime Transport Services (hereinafter "the Decision") which decided to suspend the negotiations and to resume them with the commencement of comprehensive negotiations on services. WTO member governments participating in the negotiations on MTS agreed to suspend the negotiations and to resume them based on existing or improved offers at the time of the future round of comprehensive negotiations on trade in services, which has been mandated to begin in the year 2000, with a view to achieving a progressively higher level of liberalization in MTS.<sup>15</sup> The aim of these negotiations shall be to reduce or eliminate the adverse effects on trade in MTS,

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<sup>14</sup> By the time the negotiations were suspended in mid-1996, 42 governments had been elected to participate fully in the negotiations, while another 16 governments participated in the process as observers. China, Hong Kong, Japan, and Korea were full participants of the WTO/NGMTS, while Taiwan and Russia were observers.

<sup>15</sup> Despite the collapse of the WTO ministerial meeting in Seattle in 1999, negotiations are set to begin soon on services under the so-called "built-in" agenda of the 1994 UR trade agreement.



with a view to promote the interests of all participants on a mutually beneficial basis, and to guarantee a balance of rights and obligations.

From August 1996, the WTO member governments have agreed not to apply any measures affecting trade in maritime transport services in such a manner as to improve their negotiating position and leverage, except in response to measures applied by other countries. Governments may, however, apply measures that maintain or improve the liberalization of maritime transport services.

The negotiations on MTS led to the drafting of substantial offers of liberalization. They also induced extensive bilateral negotiations, and thus deepened understanding of the issues involved in liberalization. Even though the negotiations failed to reach an agreement, they reinforced the commitment to resume negotiations within the WTO timeframe. The negotiations on trade in services commenced in early 2000, and have been proceeding according to the “roadmap” document agreed at the Special Session of the Council for Trade in Services in May 2000.

#### **IV. Policy Directions for Northeast Asia**

Some countries in the region have a strong position in the provision of maritime transport services, while others are in weak and vulnerable competitive positions. Since these countries are reluctant to liberalize the MTS, WTO provisions allow these countries more time to enable them to prepare for the competition.

##### **Adopting a Progressive Liberalization Approach**

Northeast Asian countries made a great contribution and played a leading role in both UR and WTO negotiations on the MTS. It should be noted, however, that there had not been any concerted effort toward a single or harmonized voice throughout the negotiations. We can see this by examining brief profiles of the activity of Northeast Asian countries during the UR and WTO negotiations on

MTS, including their submissions of commitments or conditional offers, requests for MFN exemption, and their arguments on the major issues.

- China made UR commitments in a number of areas, including international MTS and auxiliary services. It also requested an MFN exemption for cargo-sharing agreements and joint ventures.
- Hong Kong made UR commitments for international MTS (excluding passengers) and auxiliary services.
- Japan reinstated its UR offer, including international MTS and maritime auxiliary services (maritime cargo handling, container stations and depots, and maritime agencies) and port services.
- Korea made UR commitments and a WTO improved-offer in the areas of international MTS and maritime auxiliary services such as shipping agents, maritime freight forwarding, ship brokering, maintenance/repair of ships, international rental of ships, custom clearance, warehousing, and cargo handling services.<sup>16</sup>

Among the requirements to promote the integration of the maritime transport market in Northeast Asia, several are prerequisites. First, countries in the region should remove, immediately or gradually, according to a schedule specified in advance, the practice of national cargo reservation, in order to give foreign flag vessels greater access to the reserved cargoes. Second, since integration of MTS includes auxiliary services such as port services and loading and unloading services, the liberalization principle should be extended to those services. Third, for fair competition, countries in the region should also remove the practice of governmental supports and subsidies. Finally, countries in the region should phase out discriminatory bilateral shipping agreements, as well as the UN Liner Code, which restricts liberal trade in the maritime transport services.

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<sup>16</sup> Korea's offer also includes that the following services at the port are made publicly available to international maritime transport suppliers on reasonable and non-discriminatory terms and countries: ① pilotage ② towing and tug assistance, ③ provisioning, fuelling and watering, ④ garbage collecting and ballast waste disposal, ⑤ port captain's service, ⑥ navigation aids, ⑦ shore-based operational services essential to ship operations, including communications, water and electrical supplies, ⑧ emergency repair facilities, and ⑨ anchorage, berth and berthing services.

However, among Northeast Asian countries, Hong Kong, Taiwan, and Korea have responded actively to the trends toward liberalization and globalization in the maritime transport sector, while Japan and China continue to maintain rigid restrictions on the maritime transport sector to protect the interests of their own against efficient foreign counterparts. Given the differences in competitiveness among maritime sectors of region's countries, the principle of *'balance of market access opportunities'* will not be acceptable to the countries with weak and vulnerable maritime sectors. Therefore, there needs to be a concerted effort to bring these countries together using the following three progressive approaches and to make them work towards liberalization of the maritime transport market:

- (1) Bilateral approach: Korea-China, Korea-Japan and China-Japan;
- (2) Trilateral approach: China-Korea-Japan block; and
- (3) Multilateral Approach via WTO

Multilateral negotiations via WTO should be pursued as a long term goal, but these efforts are not likely to be successful in achieving any concrete progress towards maritime transport liberalization in the short- to medium-term. Therefore, rather than trying to achieve wholesale liberalization in one shot, it is desirable to group like-minded countries to promote services sector liberalization and to try to agree on a time table for achieving precise stages of liberalization gradually. The GATS framework provision has stipulated progressive liberalization in Article XIX. There is a need to allow for some flexibility by adopting a progressive liberalization of the three pillars, while setting up a time frame of liberalization of other pillars.

If we cannot change the current institutional framework of negotiating maritime transport matters separately from other services trade matters, bilateral negotiations between two countries are likely to be more effective in bringing about liberalization than regionally based multilateral negotiations. The current bilateral agreement approach among China, Korea and Japan is likely to help to liberalize the maritime transport services in the Northeast Asian region. For example, Korea may deal with bilaterally with China and Japan separately. However, the China-Korea-Japan-initiated Northeast Asian trading bloc approach may be the best one can hope for in achieving some progress towards creating a liberalized maritime transport market in the Northeast Asia. The anticipated

China's accession to the WTO will pave the way to soften Chinese government attitude towards such tripartite liberalization.

### **Creation of a Regional Maritime Transport Liberalization Committee**

In order to move the maritime transport liberalization programs as quickly as possible, it is desirable to establish a "Regional Maritime Transport Liberalization Committee." We suggest it to be a Tripartite (China, Japan and Korea) Committee initially, which can later expand its membership to include other Northeast Asian countries. In order for this institution to devise a practical road towards maritime transport liberalization, this committee should be set up at the national level as well. That is, the National Committees together constitute the Regional Maritime Transport Liberalization Committee. The national level Committee chairpersons should take turns in serving as head of the regional Committee. In order for this committee be effective in achieving its objective, the committee should be composed of the Ministry of International Trade (Industry and Commerce), Ministry of Transport or Ministry of Maritime Affairs, Customs (and Immigration) Departments, International Traders Association or Chamber of Commerce, Transport User Groups, such as Consumer Associations and Shippers Associations, and other Transport Supporting Industries such as Banks and Insurance.

The National Maritime Transport Facilitation Committee should have its own Secretariat, and should report directly to the President or Prime Minister in consultation with the Ministers of Trade and of Transport (or of Maritime Affairs). In addition, The National Committee should be given the authority to set priorities and agenda for maritime transport negotiations with the Northeast Asian governments. The National Committee should prepare and implement working program, such as:

1. Implementing harmonized national maritime transport regulations;
2. Developing policies and solutions for maritime transport problems; and
3. Recommending to the Regional Committee measures to harmonize legal, practical and institutional problems encountered in developing efficient regional maritime transportation systems.

The Regional Maritime Transport Liberalization Committee will enable Northeast Asian bloc to adopt a common goal. This can be achieved through first

discussing and agreeing to some principles under which these sorts of negotiations could proceed. Documenting detailed impediments and developing complementary programs in economic and technical co-operation could be examples going beyond GATS. Consequently, the countries of the region, as a Northeast Asian bloc, will be able to create a new paradigm for MTS by taking their own initiative as a group, rather than merely reacting to pressures exerted externally by other major trade blocs. By having the countries of region adopt common efforts and strategies in order to liberalize the maritime transport services, Northeast Asia can better its bargaining position in the negotiations on MTS, rather than being dominated by common forces of the EU and the U.S. Otherwise, these driving forces in maritime services will adopt an approach for liberalization in the MTS, in which they pick countries and push to negotiate separate agreements as they do in air transport service. In the process, they may exclude some powerful Northeast Asian countries from the negotiations. Therefore, the Northeast Asian bloc should spearhead negotiations with the EU, US and other regional blocs with a view to reaching acceptable agreements regarding liberalization of the MTS.

## V. Conclusions

Efficient and sustainable development of maritime transport system will be as major a force in promoting growth and change in Northeast Asia as it is in other parts of the world. To fulfill the critical role, region-wide market liberalization must be at the forefront. There are increasing pressures to achieve freer international trade in maritime services. These stems not only from market forces such as mergers and global alliances among major shipping lines, but also international negotiations through the WTO regime. Considering the progress of the negotiations on trade in services, we have to seek solutions that would offer meaningful progress for multilateral liberalization in maritime transport services, and thus support the liberalization objectives of the multilateral trading system.

As an alternative to transport market liberalization within the framework of the WTO multilateral framework, countries of a particular region can form their own regional arrangement. Liberalized and integrated maritime transport market in Northeast Asia will lead to a welfare maximizing market outcome in the region,

and will ensure these outcomes at the global level, by removing legal, institutional, and technical barriers that hinder the free movement of cargo and people.

Since there are a lot of advantages to be derived from liberalization in MTS, Northeast Asian countries should take steps to abolish legislations which restrict the efficient provision of maritime services and to provide a legal framework with more liberal regimes for the provision of maritime services. However, each Northeast Asian country is at a different stage of economic and technological development. Plus, there is a high degree of uncertainty regarding the economic and political benefits to be gained from achieving complete liberalization in the EU and elsewhere. In this regard, it may be the best to take gradual and progressive approach to liberalizing maritime transport markets in Northeast Asia.

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