

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISCUSSION PAPERS

**LINER SHIPPING: IS THERE A WAY  
FOR MORE COMPETITION?**

No. 224  
March 2016



UNITED NATIONS



# **LINER SHIPPING: IS THERE A WAY FOR MORE COMPETITION?**

*Anila Premti*

No. 224  
March 2016

***Acknowledgements:*** The author would like to thank José Maria Rubiato, Jan Hoffmann, Pierre Latrille, Martin Roy, Prof. Rosa Greaves, Felix Heitmann, Jörg Mayer and two anonymous referees for their helpful comments and insights on earlier drafts of this paper.

The opinions expressed in this paper are those of the author and are not to be taken as the official views of the UNCTAD secretariat or its member States. The designations and terminology employed are also those of the author.

*UNCTAD Discussion Papers* are read anonymously by at least one referee, whose comments are taken into account before publication.

Comments on this paper are invited and may be addressed to the author, c/o the Publications Assistant, Macroeconomic and Development Policies Branch, Division on Globalization and Development Strategies, United Nations Conference on Trade and Development, Palais des Nations, CH-1211 Geneva 10, Switzerland; e-mail: [gdsinfo@unctad.org](mailto:gdsinfo@unctad.org).

*UNCTAD Discussion Papers* are available on the UNCTAD website at <http://unctad.org>.

## *Contents*

	<i>Page</i>
<i>Abstract</i> .....	1
<b>I. INTRODUCTION</b> .....	1
<b>II. LINER SHIPPING COOPERATIVE ARRANGEMENTS</b> .....	2
A. Conferences.....	3
B. Consortia and other non-ratemaking agreements .....	4
C. Capacity stabilization and discussion/talking agreements.....	5
<b>III. INTERNATIONAL ORGANIZATIONS WITH ACTIVITIES AND INSTRUMENTS ON LINER SHIPPING COMPETITION</b> .....	5
A. The United Nations Conference on Trade and Development .....	5
B. The Organisation for Economic Cooperation and Development .....	7
C. The World Trade Organization.....	8
<b>IV. REGIONAL AND NATIONAL COMPETITION LAWS APPLICABLE TO LINER SHIPPING</b> .....	11
A. The European Union .....	11
B. The United States of America .....	16
C. Selected countries .....	18
<b>V. GLOBAL ALLIANCES AND THEIR ASSESSMENT</b> .....	22
<b>VI. POTENTIAL UNCERTAINTIES AND OTHER CONSIDERATIONS</b> .....	26
<b>VII. CONCLUDING REMARKS</b> .....	27
<b>REFERENCES</b> .....	31

### *List of figures*

1 Capacity shares of four mega alliances in Asia–North Europe trade .....	25
2 Capacity shares of four mega alliances in Asia–Med trade .....	25



# LINER SHIPPING: IS THERE A WAY FOR MORE COMPETITION?

*Anila Premti*

*United Nations Conference on Trade and Development (UNCTAD)*

## **Abstract**

*With around 80 per cent of global trade by volume and over 70 per cent of global trade by value carried by sea, and with these shares being even higher in the case of most developing countries, maritime transport, including liner shipping, remains highly important for international trade and the global economy. To ensure stability in the sector, in various jurisdictions around the world, liner shipping conferences – arrangements among ocean carriers allowing for freight rate fixing – have been exempted from the application of competition laws over the years. Many of these jurisdictions confer exemptions, under similar conditions also to consortia and strategic alliances – arrangements among ocean carriers that do not involve freight rate fixing. The paper aims to provide an overview of recent and potential developments related to competition and cooperation in liner shipping. A number of reviews and studies conducted over the last decades by organizations and individual countries have suggested that liner shipping may not be unique, as its cost structure does not differ substantially from that of other industries, or at least not sufficiently to justify that it needs to be protected from competition, by being exempted from competition laws. As a result, such exceptions have gradually come under review and have narrowed in scope, giving more space to pro-competition, non-ratemaking agreements. Therefore countries are encouraged to establish appropriate and harmonized regulatory systems to support and monitor such agreements. Carriers may continue to collaborate to achieve operational improvements, while the competition authorities ensure that the competition in the market is sufficient and shippers benefit from eventual cost savings. At the same time, enhancing cooperation between national competition agencies, sharing of information among them, and other relevant measures shall be encouraged.*

## **I. INTRODUCTION**

Competition law is also known as “antitrust law” (e.g. the United States), or “anti-monopoly” law (e.g. China and the Russian Federation). In the past it was also known as “restrictive trade practices law” in the United Kingdom and in Australia. Although the content and practice of competition laws, including those applicable to liner shipping, vary in different countries, their purpose is “to control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development” (UNCTAD, 2010: 2).<sup>1</sup>

---

<sup>1</sup> Such restrictive agreements include particularly cartels. According to the *OECD Glossary of Statistical Terms* available at: <http://stats.oecd.org/glossary/detail.asp?ID=3157>, a cartel is a formal agreement among firms in an oligopolistic industry. Cartel members may agree on such matters as prices, total industry output, market shares, allocation of customers, allocation of territories, bid-rigging, establishment of common sales agencies, and the division of profits or combination of these. In this broad sense this definition is synonymous with explicit forms of collusion.

Throughout its history, liner shipping, the business of offering regular time scheduled ocean shipping services in international trade,<sup>2</sup> has enjoyed exemptions from the effect of certain competition rules and, as a result, conferences<sup>3</sup> among oceans carriers, allowing for freight rate fixing, have been permitted. The main reason for this practice has been the belief that it was justified by the specific economic problems faced by liner shipping as compared to other industries. These include unusually high fixed costs, very large initial capital investment, other large non-cargo costs, overcapacity, etc. As a result, it was argued that without collective freight rate fixing, open and unrestrained competition would lead to “destructive” competition, instability of prices and undesirable oligopoly.<sup>4</sup>

Following discussion in many countries and regional organizations as to whether exemptions from competition rules, historically enjoyed by liner conferences, are still justified, there has been a tendency during the last decade towards review and narrowing of the scope of such exemptions. In addition, there appears to have been a shift of emphasis among shipping lines away from the traditional liner conferences, and towards the establishment of alliances and other forms of efficiency-enhancing operational types of agreements.<sup>5</sup> In these circumstances, carriers continue to collaborate to achieve operational improvements, while the competition authorities ensure that there remains sufficient competition in the market so that eventual cost savings are passed on to the shippers.

This paper will briefly examine the rationale behind the exemptions from the effects of competition laws that have been historically granted to liner shipping cooperative arrangements, the legitimacy and continued justification for such exemptions, as well as applicable instruments, negotiations, and relevant legislative developments. It will continue with a brief description of the recent global alliances among major shipping lines, related considerations, potential legal uncertainties and the way forward.<sup>6</sup>

## II. LINER SHIPPING COOPERATIVE ARRANGEMENTS

Liner shipping has for a long time been governed by cooperative arrangements, originally in the form of conferences, and later, with the emergence of containerization, also in the form of consortia, vessel sharing agreements, strategic/global alliances, capacity stabilization agreements and discussion/talking agreements.<sup>7</sup>

---

<sup>2</sup> Irrespective of the amount of cargo they have on board. Ships involved in this trade include general cargo carriers, specialized cargo carriers (e.g. refrigerated goods carriers or car carriers), and/or partially or fully dedicated container carriers. Liner shipping is distinct from bulk shipping services, which carry non-containerized raw materials in bulk form such as crude and refined oil, grain, coal, cement or liquefied gas and are provided only on demand by shippers on non-scheduled routes. There are approximately 400 liner services, most sailing weekly, in operation today. For further information, see the website of the World Shipping Council, [www.worldshipping.org](http://www.worldshipping.org).

<sup>3</sup> The term “conference” is broad, as it covers a wide variety of arrangements, both formal (written) and less formal agreements regarding rates, frequency of service, loyalty and other arrangements.

<sup>4</sup> For a summary of theories and the underlying reasons for liner shipping conferences and antitrust exemptions, see OECD, 2015: 12–15. See also Sagers, 2006: 802, and Sjostrom, 2009.

<sup>5</sup> Important container lines have been establishing new alliances or expanding existing ones into new routes. For further information, see section V below.

<sup>6</sup> The paper will however not deal with issues of competition in ports and port services.

<sup>7</sup> The paper will however deal neither with agreements relating to “tramp pools” - a number of vessels under different ownership but of a similar type and operated under a single administration – nor with “cabotage”- traffic from port to port within a single State. For more information on the various organizational forms, see OECD, 2002a: 24–27; see also OECD, 2002b: 16–20.



## A. Conferences

*Liner conferences*, also called “shipping conferences” or “ocean shipping conferences”, have had the most significant influence on competition in the liner shipping market compared to other organizational forms of operation. Liner conferences are “formal or informal private arrangements between carriers or between shipping lines which enable them to utilize common freight rates and to engage in other cooperative activities on a particular route or routes” (OECD, 2002b: 16).<sup>8</sup>

The *United Nations Convention on a Code of Conduct for Liner Conferences, 1974*,<sup>9</sup> defines liner conferences as: “A group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services” (UNCTAD, 1974: 4).

Liner conferences have lasted for years, although individual conference membership may change according to carriers’ business strategies.<sup>10</sup> The first liner conference was established in 1875 covering routes between the United Kingdom and India, with the aim to control competition among its members and to reduce competition from outsiders. This model quickly spread around most of the main world trade routes. According to the Organisation for Economic Cooperation and Development (OECD), as of 2002, there were around 150 shipping conferences operating in the international freight trade market, with a membership ranging from two to as many as forty separate lines. Although their relevance was declining since the 1970s, conferences still accounted for 60 per cent of TEU<sup>11</sup> capacity in the major trades (see OECD, 2002a: 20).

In the last decade, the role of conferences has further declined. Only 18 per cent of existing conference agreements involve the main routes, while almost half of them involve the North-South routes. The top three carriers are included in many agreements but mostly on the North-South and Intra-regional services, as the main routes are largely served through other cooperation agreements, mainly strategic alliances. Some conference agreements are still in force in the East Mediterranean and for some parts of the main Far East-Europe routes (e.g., those connecting Middle East countries with India or the Far East). Other conference agreements concern Australian or African connections and tend to serve those markets, mainly from Asiatic ports. The number of carriers involved in these agreements ranges from only two carriers to more than 10 in a few cases, with a maximum of almost 30 carriers. The majority of the carriers that are part of conferences are small-medium sized companies. Yet, almost all the top 30 players (in terms of vessels deployed capacity) are included in at least one conference agreement. Half of these liners are involved in just one conference while no more than 10 per cent are involved in more than ten (see OECD, 2015).<sup>12</sup>

In terms of membership, liner conferences can be classified as being either open or closed. For instance, the United States approach has been that of open membership, with equal possibilities for all lines to become a member of a conference, while the rest of the world’s approach, in general, has been in favour

<sup>8</sup> Also see the *OECD Glossary of Statistical Terms*. Available at: <http://stats.oecd.org/glossary/detail.asp?ID=3311>.

<sup>9</sup> Adopted on 6 April 1974, and entered into force on 6 October 1983. The same definition of “liner conference” was also included in European Council Regulation 4056/86 of 22 December 1986.

<sup>10</sup> See OECD, 2002a: 62, citing Shashikumar, 1996.

<sup>11</sup> TEU or teu – the twenty-foot equivalent unit is a unit of cargo capacity used to describe the capacity of container ships and container terminals.

<sup>12</sup> For the most recent key developments affecting international seaborne trade, shipping, the world fleet, ports and freight markets, also see UNCTAD, 2015. For further information on current policies and trends in the liner shipping industry, also see Meersman et al., 2015; Alexandrou et al., 2014; and Parola et al., 2014.

of closed conferences, where in order to be admitted, new members have to apply and meet certain specific conditions.

### ***B. Consortia and other non-ratemaking agreements***

*Consortia* started to be established by liner conference members in the 1960s, following containerization, as a supplementary mean which along with global/strategic alliances and other cooperative arrangements, gradually started to replace conferences, particularly in the United States and European trades where legislative changes narrowed the scope of the antitrust immunity enjoyed by conferences.

According to OECD, consortia are “agreements/arrangements between liner shipping companies aimed primarily at supplying jointly organized services by means of various technical, operational or commercial arrangements (e.g. joint use of vessels, port installations, marketing organizations, etc.)” (OECD, 2002b: 18).<sup>13</sup> A consortium has also been defined as “An agreement or a set of interrelated agreements between two or more vessel operating carriers which provide international liner shipping services exclusively for the carriage of cargo relating to one or more trades, the object of which is to bring about cooperation in the joint operation of a maritime transport service, and which improves the service that would be offered individually by each of its members in the absence of the consortium, in order to rationalize their operations by means of technical, operational and/or commercial arrangements”.<sup>14</sup>

Thus, unlike conferences, consortia do not set common freight rates. They have a more pro-competitive nature, aiming to improve the efficiency of the operations of their members through technical, operational and commercial arrangements. Thus they enable their members to mitigate risks stemming from fluctuations in demand for shipping services, and aim to provide lower-cost services, enhanced frequencies and a wide variety of destinations. Moreover, in terms of membership, consortia can take a variety of forms. They can be composed entirely of independent lines, by members of the same conference, or by both conference and non-conference members. In some instances, conferences have members that participate in several consortia.

*Vessel sharing agreements* for instance, are a consortium subcategory, and have become a frequent form of cooperation between liner shipping companies. Their aim is “to maintain a commercial presence on a specified loop or maritime route, whilst withdrawing a ship and redeploying it by reserving space on the vessel of a partner company, the partner in turn proceeding in the same way on another loop” (see WTO, 2010: 26).

*Strategic/global alliances* are another form of cooperation between liner shipping companies, which became operational in the 1990s. They normally consist of a small group of carriers which have as their purpose to establish, on a global basis, cooperative agreements involving substantial asset sharing and operational cooperation, while maintaining individual marketing and commercial identities. Often, vessel sharing agreements apply with the same carriers over certain major routes which can be described as global. Normally a strategic/global alliance covers at least two of the major East/West trade routes – Europe/Asia, Asia/United States, or United States/Europe. Although in terms of functioning and commercial implications, strategic/global alliances are a relatively new form of operation, in many jurisdictions they are treated as just another type of consortium or carrier agreement, and enjoy general exemptions from the effect of competition laws (see OECD, 2002b: 19).

---

<sup>13</sup> Common forms of such agreements/arrangements include “slot charters”, “slot exchange”, and “vessel sharing”.

<sup>14</sup> See European Commission Regulation 906/2009. Official Journal of the European Union. 2009. L 256: 31, 29 September, Article 2(1).

### ***C. Capacity stabilization and discussion/talking agreements***

*Capacity stabilization and discussion/talking agreements* are more flexible forms of cooperation, mainly used when there is a large number of non-conference operators participating in a certain trade, or where conferences are open, and therefore efforts by conferences to regulate capacity are ineffective. The status of these agreements varies greatly from one jurisdiction to another. In general, capacity stabilization agreements emerged in the 1980s and included both conference and non-conference lines operating in the same trades, while discussion/talking agreements are looser and non-binding (see OECD, 2002b: 20).

According to the United States Federal Maritime Commission (FMC) “discussion agreements became prevalent in the late 1980s and early 1990s as a forum within which conference lines could meaningfully participate with non-conference rivals to discuss and voluntarily act together with respect to rates, capacity, and various charges and fees. Their existence was evidence that traditional conferences lacked the flexibility to attract participation by the new independent lines, but that a broader and sufficiently flexible collective arrangement, was possible”(see Federal Maritime Commission, 2000: 13). So, the main features of discussion agreements are quite similar to those of conferences. They are exempt from the application of competition laws in the United States, as well as in some Asian countries. However, they were never exempt in the EU (see OECD, 2015: 25).

## **III. INTERNATIONAL ORGANIZATIONS WITH ACTIVITIES AND INSTRUMENTS ON LINER SHIPPING COMPETITION**

The international community’s efforts so far, unfortunately have not resulted in a standard legislative approach to liner conferences and other cooperative agreements in liner shipping, or in a globally endorsed, multilateral legally binding agreement. However, a number of instruments developed over the years by international organizations, including the United Nations Conference on Trade and Development (UNCTAD), OECD and the World Trade Organization (WTO), are worth noting, as they relate to competition in liner shipping and in maritime transport in general.

### ***A. The United Nations Conference on Trade and Development***

The *United Nations Convention on a Code of Conduct for Liner Conferences* was adopted by UNCTAD in 1974, aimed at taking into account the special needs and challenges faced by developing countries concerning liner conferences. It requested ratification/accession by “not less than 24 States, the combined tonnage of which amounts to at least 25 per cent”, for its entry into force. This condition was fulfilled in 1983, triggering its entry into force.<sup>15</sup>

The Convention sets out an international regulatory framework for shipping conferences, providing, *inter alia*, rules on access to cargo shares by ship owners established in the territories of the States Parties to the Convention and serving their mutual foreign trade. It grants certain rights to those conferences, but at the same time imposes certain obligations upon them, aimed at protecting the shippers’ interests and those of the national shipping lines of third countries. According to its Article 2:

---

<sup>15</sup> As of 31 December 2015, the Convention had 76 Contracting Parties. For its text and for more information on the status of international conventions in the field of maritime transport, prepared or adopted under the auspices of UNCTAD, see the website of the Trade Logistics Branch, Policy and Legislation Section, <http://unctad.org/en/Pages/DTL/TTL/Legal/Maritime-Conventions.aspx>. For official status information, see <http://treaties.un.org>.

4. When determining a share of trade within a pool of individual member lines and/or groups of national shipping lines...
  - (a) The group of national shipping lines of each of two countries the foreign trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;
  - (b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade.
5. If, for any of the countries whose trade is carried by a conference, there are no national shipping lines participating in the carriage of that trade, the share of the trade to which national shipping lines of that country would be entitled...shall be distributed among the individual member lines participating in the trade in proportion to their respective share.

One of the important elements introduced by the Convention was the cargo sharing formula applicable to conferences, also known as the 40-40-20 rule. It suggests that cargo should be divided 40 per cent each to national vessels of the originating and destination country, and 20 per cent to other vessels. The purpose of this formula was to ensure that vessels of developing countries had an opportunity to participate in the carriage of their trade.

In addition, the non-legally binding *Guidelines towards the application of the Convention on a Code of Conduct for Liner Conferences* were issued by UNCTAD in 1986. Among other matters, the Guidelines encouraged States Parties to include the definition of “liner conference” in their national legislations, as well as to add a provision for the appropriate authority to publish the name of the conferences which fell within its scope.

In 1979, the European Council adopted *Regulation 954/79* concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences (also known as the “Brussels package”).<sup>16</sup> According to the Regulation, EU Member States were to ratify or accede to the Convention subject to certain arrangements provided by the Regulation which addressed the redistribution of shares given by the Convention to individual Member States. The instrument of ratification or accession should be accompanied by the reservations set out in its Annex I.<sup>17</sup> These arrangements rendered the cargo sharing provisions of Article 2 of the Convention inapplicable in conference trades between EU Member States and, on a reciprocal basis, between EU Member States and other OECD<sup>18</sup> countries. It also made subject to redistribution, among the conference lines of the Member States and of other OECD countries offering reciprocity, the shares of the national lines of the Member States concerned. Although this Regulation helped fulfil the requirements for the entry into force of the Convention,<sup>19</sup> as a result of it, as well as of technological changes that followed which increased containerization, the Convention has in fact had only limited practical application, mainly due to a lack of global endorsement.

---

<sup>16</sup> Official Journal of the European Communities, 1979, L 121: 1, 17 May. For more information, see section on the European Union below.

<sup>17</sup> Sixteen EU member States have ratified or acceded to the Convention over the years.

<sup>18</sup> OECD membership consists of 34 countries from North and South America, Europe and the Asia-Pacific region. They include many of the world’s most advanced countries but also emerging countries like Chile, Mexico and Turkey. OECD also works closely with Brazil, China and India and developing economies in Africa, Asia, Latin America and the Caribbean.

<sup>19</sup> And also prepared the situation for the later adoption of European Council regulation 4056/86, Official Journal of the European Communities, 1986. L 378: 4. 31 December, granting antitrust exemptions to liner shipping conferences.

## ***B. The Organisation for Economic Cooperation and Development***

Over the years, OECD has also adopted a number of instruments relevant to liner shipping conferences. In 1961, OECD adopted the *Code of Liberalization of Current Invisible Operations (CLIO)*,<sup>20</sup> under which OECD Members have accepted legally binding obligations<sup>21</sup> that include refraining from taking action that would be contrary to the principle of free circulation of shipping in international trade and free and fair competition.

A number of non-legally binding instruments adopted at OECD over the years will also be outlined below. These include a *Recommendation of the Council concerning Common Principles of Shipping Policy for Member countries*,<sup>22</sup> supplementing CLIO, which was originally adopted in 1987 and updated in 2000. The recommendation calls upon OECD member countries, “to endeavour in pursuance of and/or in addition to their obligations under the Code, when contemplating the introduction of new laws and regulations relating to shipping policy, or the amendment of existing ones, to ensure that they are in conformity with the general principles and the guidelines contained in Annexes I and II of this Recommendation.”<sup>23</sup> The Principles advise OECD member countries to safeguard and promote open and fair competition, prevent the abuse of dominant position by any commercial party, and limit involvement to minimal intervention. However, Guidelines in Annex II,<sup>24</sup> recognize that liner shipping conferences may be advantageous when basic guidelines and rules for them have been established and followed, and encouraged member States to take a common approach to the application of competition policy to the liner shipping sector.

In addition, in 1998, the Maritime Transport Committee of the OECD published its *Conclusions on Promotion of Compatibility of Competition Policy Applied to International Liner Shipping* (OECD, 1998), which stated that there is a need to promote compatibility of competition rules applied to liner shipping and that member countries should seek practical solutions in cases of incompatibility. When applying competition policy to the liner sector, key objectives such as free and fair competition, maintenance of open trades, market access, economic efficiency, and transparency of laws, regulations and rule-making processes, are to be pursued.

An initial report, entitled *Regulatory Issues in International Maritime Transport* (OECD, 2002b), which discussed regulations governing international liner and bulk shipping, was issued by the OECD Secretariat in 2001. Work also continued on the competition aspects of these regulations, mainly on three matters: the positive and negative impact to both carriers and shippers, of common pricing under anti-trust exemptions; the impact of conference, discussion and stabilization agreements; and the possible effects stemming from the removal of anti-trust exemptions for liner shipping (OECD, 2001).

In 2002, the OECD Secretariat issued a report entitled *Competition Policy in Liner Shipping* (OECD, 2002a), where it recommended that countries should review their laws and reduce the protection granted to liner conferences. According to this report, the liner shipping industry had failed to demonstrate that price fixing was indispensable to the provision of regular, efficient and sustainable liner shipping services, or customers had not shared in the benefits of price fixing and there were other mechanisms available to shipping lines, including individual confidential contracts, to enable them to seek greater efficiency, effective services and sustainable business.

---

<sup>20</sup> The latest version of the Code, published in 2013, is available at: [http://www.oecd.org/daf/fin/private-pensions/InvisibleOperations\\_WebEnglish.pdf](http://www.oecd.org/daf/fin/private-pensions/InvisibleOperations_WebEnglish.pdf).

<sup>21</sup> Subject to reservations.

<sup>22</sup> C(87)11/FINAL, 13 February 1987. C(2000)124/FINAL, amended on 28 September 2000. Available at: <http://webnet.oecd.org/OECDACTS/Instruments/ShowInstrumentView.aspx?InstrumentID=162&InstrumentPID=158&Lang=en&Book=>

<sup>23</sup> See the introductory part of the Recommendation.

<sup>24</sup> Guidelines concerning competition policy as applied to liner shipping.

### C. The World Trade Organization

Although competition and trade, including trade in maritime transport services, are closely linked, no international regime for competition policy or a legally binding instrument on competition have been adopted at the WTO so far.<sup>25</sup> Maritime transport involves different kinds of services, from shipping to port facilities, each of which is organized in complex ways. Liner shipping for instance, has been dominated by rate fixing conferences or other arrangements, while bulk shipping has remained relatively competitive. Some maritime transport services are operated by private enterprises and others by the State. In addition, there are also lobbying and labour union practices that have to be considered. Therefore finding common negotiated solutions in these circumstances may be difficult. Nevertheless, negotiations held at WTO have dealt with: international shipping (transportation of passengers or freight between ports in different countries); auxiliary services (such as cargo handling, storage and warehousing, stevedoring, freight forwarding, customs clearance services etc.); and access and use of port facilities (such as pilotage, towing, provisioning, garbage collection, anchorage, etc.). Multimodal transport (door-to-door service, involving the use of one or more modes, i.e. road, rail, air, or inland water transport, in addition to shipping by sea) emerged later in the negotiations. The negotiations have however not dealt with cabotage shipping between ports in the same country (WTO, 2003).

At the WTO, the issue of competition in liner shipping has been addressed both in the general context of the competition policy agenda (under the subject of international cartels that are discussed in the Working Group on the Interaction between Trade and Competition Policy (WGTCP))<sup>26</sup> and through the maritime sector negotiations in the framework of the General Agreement on Trade in Services (GATS).

The WTO has focused on including anti-competitive provisions under its various Uruguay Round<sup>27</sup> agreements, including GATS.<sup>28</sup> The GATS consists of three elements: *the main text* containing general obligations and disciplines; various *Annexes* dealing with rules for specific sectors (including maritime services sector); and a *schedule of commitments*, where each WTO Member lists the commitments on market access (Article XVI)<sup>29</sup> and national treatment (Article XVII)<sup>30</sup> including indications of where

---

<sup>25</sup> The WTO, as of 30 November 2015, had 162 members, of which over two thirds are developing countries.

<sup>26</sup> In July 2004, the General Council of the WTO decided that the interaction between trade and competition policy would be one of the areas that would no longer form part of the Work Programme set out in the Doha Ministerial Declaration and therefore, no work towards negotiation would take place during the Doha Round. See WTO (2004), paragraph 1(g). For further information about discussions on competition policy in international trade circles, see also Evenett and Clarke, 2003.

<sup>27</sup> Most of the WTO agreements are the result of the 1986–94 Uruguay Round negotiations, signed at the Marrakesh ministerial meeting in April 1994. New negotiations were launched at the Doha Ministerial Conference in November 2001.

<sup>28</sup> Available at: [www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](http://www.wto.org/english/docs_e/legal_e/26-gats.pdf).

<sup>29</sup> Article XVI (Market Access) of GATS states: “With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.”

<sup>30</sup> Article XVII (National Treatment) of GATS states: “In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.”

countries are temporarily not applying the “most-favoured-nation”<sup>31</sup> principle of non-discrimination; as well as any additional commitments (Article XVIII) it undertakes in individual sectors which may relate for instance to the use of standards, qualifications or licenses. Articles XVI and XVII of GATS, commit Members to giving no less favourable treatment to foreign services and service suppliers than provided for in their Schedule. Thus commitments guarantee minimum levels of treatment, but do not prevent Members from being more open or less discriminatory in practice.

Negotiations have resulted in individual countries’ commitments to open markets to various degrees in specific sectors. The commitments appear in “schedules” that list: the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Changing or modifying commitments is difficult, as they can only be modified after negotiations with the affected countries. Therefore the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business. Members are not obliged to make commitments on all the services sectors, and they may choose not to make a commitment on the level of foreign competition in a given sector. Thus the Member’s only obligations are minimal, for example to be transparent in regulating the sector, and not to discriminate between foreign suppliers.<sup>32</sup>

Thus, commitments under the GATS have implications for competition in the maritime services markets. There are currently 56 WTO Members with commitments in the maritime transport services sector.<sup>33</sup> Commitments undertaken in respect of international maritime transport, auxiliary services and access to and use of port infrastructure, unlike existing commitments in other sectors, are not necessarily definitive. The negotiation of commitments and lists of MFN exemptions in the maritime transport sector is subject to particular conditions as specified in the *Decision of the Council for Trade in Services of 3 July 1996 (S/L/24)*.<sup>34</sup> This Decision provides that the maritime negotiations would resume with the commencement of comprehensive negotiations on services five years after the entry into force of the results of the Uruguay Round, on the basis of “existing or improved” offers. It also stipulates that “a Member may improve, modify or withdraw all or part of its specific commitments in this sector, during a period of sixty days the end of which shall coincide with the conclusion of the negotiations referred to in paragraph 1” and that “during the same period, Members shall finalize their positions relating to MFN Exemptions in this sector”. In addition, the decision suspends, until the conclusion of the negotiations, the application of the MFN clause to the subsectors concerned, except in those subsectors where members have undertaken commitments.<sup>35</sup>

---

<sup>31</sup> MFN is a principle contained in Article 2(1) of GATS, which means treating one’s trading partners equally on the principle of non-discrimination. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.) MFN applies to all services, but some special temporary exemptions have been allowed. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular services activities by listing “MFN exemptions” alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They are currently being reviewed as mandated, and will normally last no more than ten years.

<sup>32</sup> For further information, see [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm).

<sup>33</sup> See <http://i-tip.wto.org/services/ComparativeReports.aspx>. For further information and an analysis of the commitments regarding maritime transport, see WTO, 2010: 37–43.

<sup>34</sup> Available at: <https://docs.wto.org>.

<sup>35</sup> For more information, see WTO, 2010: 35.

The Negotiating Group on Maritime Transport Services decided to suspend the negotiations until the commencement of the next services round of negotiations in 2000. Since 2000, maritime sector negotiations have concentrated mainly on market access issues, and on additional commitments in relation to access/use of port services, but not so much on anti-competitive practices of liner conferences.<sup>36</sup> In November 2005, WTO members collectively identified sectoral and modal objectives (WTO, 2005) for negotiations on maritime transport. Following the *Hong Kong Ministerial Conference Declaration* of December 2005, two separate plurilateral requests<sup>37</sup> were prepared and addressed to targeted members. These requests recommended the use of the so-called “maritime model schedule”. They mainly called for the elimination of cargo reservations, of restrictions on foreign equity participation and on the right to establish a commercial presence both for international freight transport and for maritime auxiliary services. They also called for additional commitments on access to and /or use of port services and multimodal transport services as well as for the elimination of most-favoured nation (MFN) exemptions.<sup>38</sup>

Two rounds of plurilateral negotiations were conducted in early 2006, based on 21 collective requests that were formulated mostly along various sector lines. The results of the plurilateral negotiations, as well as additional bilateral meetings, were expected to be reflected in a second round of revised offers. While Annex C provided a timeline of 31 July 2006 for the submission of these offers, all negotiations under the Doha Development Agenda (DDA) were suspended just one week earlier, due mostly to a stalemate over agricultural and non-agricultural market access (NAMA). Negotiations resumed in February 2007. After several clusters meetings, there was a prevailing sentiment that the “plurilaterals” had served their purpose for the time being. However, WTO members continued their work with bilateral encounters.<sup>39</sup>

As with other areas under the Doha Development Agenda, the services’ negotiations entered into an intensified phase at the beginning of 2011. In April 2011, the Chair of the Council for Trade in Services submitted a report (WTO, 2011) to the Trade Negotiations Committee on the achievements and remaining gaps in all four areas of the services’ negotiations, including market access; domestic regulation; GATS rules; and the implementation of LDC modalities.

Another important development of general relevance, including for the maritime transport services sector, was the adoption in December 2011 by the WTO Ministerial Conference of a waiver which allows WTO members to deviate from their MFN obligation of non-discrimination in order to provide preferential treatment to services and service suppliers from least-developed countries (LDCs).<sup>40</sup>

---

<sup>36</sup> Copies of proposals submitted at the negotiations on “Maritime transport services” and “Services auxiliary to all modes of transport”, are available at: [https://www.wto.org/english/tratop\\_e/serv\\_e/s\\_propnewnegs\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm). In fact, one negotiating proposal on maritime transport, submitted by Australia in 2001 (S/CSS/W/111), had generally mentioned competition issues, and among others states “Lack of appropriate competition legislation or its enforcement by governments prevents growth of efficiency and reduction of costs in the MTS subsector. It is proposed that competition policy issues be discussed during the next round of MTS negotiations. Understandings reached during such discussions can be incorporated into a special annex to the agreement.”

<sup>37</sup> Under plurilateral negotiations, a group of members with a common interest make a joint request to individual members to improve specific commitments in a particular sector or mode of supply. Subsequently, they meet collectively with the countries that have received this request.

<sup>38</sup> For further information see the WTO website, [www.wto.org/english/tratop\\_e/serv\\_e/transport\\_e/transport\\_maritime\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_e.htm).

<sup>39</sup> For more information see the WTO website, [www.wto.org/english/tratop\\_e/serv\\_e/key\\_stages\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/key_stages_e.htm). For economic and regulatory developments in WTO member countries during the decade 2001-2010, see WTO (2010: 23–28 and 31–43), which revises, updates, and supplements Secretariat background papers S/C/W/62 of 16 November 1998 and S/CSS/W/106 of 4 October 2001, on the same subject.

<sup>40</sup> Of the 162 WTO members, 34 are LDCs who could benefit from preferential treatment designed to promote their trade in those sectors and modes of supply that are of particular export interest to them.



The issue of fair competition in services in general has also been referred to in Article IX of GATS, according to which member countries shall enter into consultations and exchange non-confidential information with a view to eliminating practices that restrict competition, upon request of the affected member country. However, there has been no indication that this provision has been formally used by Members, including in relation to maritime transport services.<sup>41</sup>

It is worth noting that while the GATS framework does not contain disciplines on competition, Members have the possibility, pursuant to Article XVIII to undertake “additional commitments” in their schedule of commitments on matters not captured by Articles XVI (Market Access) or XVII (National Treatment), such as, for example, competition matters.<sup>42</sup> Since “additional commitments” are negotiable and not part of the general framework, any commitments undertaken under this umbrella would be binding on those that so indicate in their schedules, to the benefit of all other Members.<sup>43</sup>

#### **IV. REGIONAL AND NATIONAL COMPETITION LAWS APPLICABLE TO LINER SHIPPING**

Despite major differences in the way competition laws of individual countries are applied to liner shipping, most of them have traditionally granted some form of exemption or anti-trust immunity to liner conferences. However, more recently, following ongoing discussion and analysis on whether exemptions from the effect of some competition rules granted to liner conferences are still justified, there has been a tendency in several jurisdictions towards the review of such exemptions, with the aim of narrowing the scope of regulatory protection, and subjecting liner conferences to open competition like all other industrial sectors. It is therefore important to provide a brief summary of the main features of the laws and policies applicable to liner shipping conferences, consortia, and other forms of cooperation agreements, in various legal systems around the world, particularly those of the European Union and the United States, as they are major trading partners for many countries, including developing countries.

##### ***A. The European Union***

Article 101(1) of the *Treaty on the Functioning of the European Union (TFEU)*<sup>44</sup> prohibits agreements and concerted practices that restrict competition, such as price fixing and capacity control agreements. An agreement can only be excepted if it cumulatively fulfils the conditions contained in Article 101(3) TFEU, namely:

---

<sup>41</sup> Worth noting in this context is Fink et al. (2001), a policy research working that recommends: first, putting an end to the exemption of collusive agreements in the maritime sector from national competition law, and secondly, the creation of a right of foreign consumers to challenge anti-competitive practices by shipping lines in the national courts of countries whose citizens own or control these shipping lines. The second obligation would be necessary to deal with a possible failure to enforce, and already has a precedent in the WTO rules on intellectual property and government procurement. One strategy to achieve these would be for a coalition of developing countries to put forward in that round of WTO negotiations, an offer of substantial liberalization conditional on the strengthening of Article IX.

<sup>42</sup> See for instance WTO (1996), a Telecom Reference Paper, which was developed by a group of Members, as a set of regulatory obligations that a majority of WTO Members have inscribed in their schedule through “additional commitments”. In particular, it contains a provision providing that “Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices”. 82 WTO members have committed to the regulatory principles spelled out in the “Reference Paper”, which largely reflects “best practice” in telecoms regulation. A similar thing could also be used for maritime transport, should Members so wish.

<sup>43</sup> For further information see the section on maritime transport in document WTO, 2012.

<sup>44</sup> The TFEU came into force on 1 December 2009, following the ratification of the Treaty of Lisbon, which made amendments to the Treaty on European Union and the Treaty establishing the European Community (TEC). The TFEU is an amended and renamed version of the TEC which entered into force in 1958. Article 101(1) of TFEU used to be Article 81(1) of TEC.

[C]ontributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

### *1. Conferences*

In the European Union (EU), there is no exemption from the application of the EU competition rules for any industrial sector including maritime transport services. However, the EU Council adopted *Regulation 954/79*<sup>45</sup> facilitating the ratification or accession by EU Member States to the United Nations Convention on a Code of Conduct for Liner Conferences, which aimed at adopting a common position by the European Community Member States in relation to the this Convention. In fact, both the above instruments provided for a system of the so-called closed conferences. This system was accepted through the subsequent adoption by the EU Council of *Regulation 4056/86*,<sup>46</sup> which provided for a block exemption from the prohibition of liner conference agreements, decisions and practices which restrict competition. This Regulation nevertheless, in its Article 4 set out certain conditions for such exemption. For instance:

[T]he agreement, decision or concerted practice shall not within the common market, cause detriment to certain ports, transport users or carriers by applying for the carriage of the same goods and in the area covered by the agreement, decision or concerted practice, rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, unless such rates or conditions can be economically justified.

In addition, Individual Service Contracts (ISC) between conference members and shippers, were not to be restricted by a conference, and fixing inland rates jointly was not considered to be within the scope of permitted practices covered under this Regulation.

In 2003, a review of Regulation 4056/86 was initiated by the European Commission, in order to check whether the justification for price fixing and supply control by liner conferences could still be considered as necessary under changing market circumstances. The examination found no causal link between price fixing and reliable liner shipping services, and it was estimated that a repeal of the exemption would improve service quality, and lead to a moderate drop in prices and considerable reductions in charges and surcharges (European Commission, 2005). Moreover it was argued that this decrease in transport prices would provide developing countries with the opportunity to increase imports and especially exports. The repeal was also likely to have a positive impact on developing countries since they typically export low value commodities with a relatively high transport cost share (European Commission, 2005: 28).

Consequently, in September 2006, EU Council adopted *Regulation 1419/2006*<sup>47</sup> which repealed Regulation 4056/86. As a result, with effect from 18 October 2008, liner conference activities such as price fixing and capacity control, previously allowed by that Regulation, were no longer block exempted from the scope of Article 101(1).

As regards the relationship with the United Nations Convention on a Code of Conduct for Liner Conferences, as from 18 October 2008, EU Member States are prevented from fulfilling their obligations

---

<sup>45</sup> Official Journal of the European Communities, 1979. L 121: 1. 17 May.

<sup>46</sup> Official Journal of the European Communities, 1986. L 378: 5. 31 December. This regulation is no longer in force. See further below.

<sup>47</sup> Official Journal of the European Union, 2006. L 269: 1. 28 September.

under that Convention, and are no longer in a position to ratify, approve or accede to it.<sup>48</sup> However, it was also understood that EU Member States which were already Contracting Parties to the Convention, would not have a legal obligation to denounce it.<sup>49</sup>

Along with the changes introduced by Regulation 1419/2006, a new competitive regime started for the maritime industry. It became clear that after 18 October 2008, Article 101 TFEU applies in its entirety to liner shipping. Thus anti-competitive practices of shipping conferences would become unlawful on trades to/from ports of the Community (see also European Commission, 2007).

The European Commission adopted Guidelines (European Commission, 2008: 2–14) to provide guidance on the application of Article 101 TFEU to the maritime sector, and to facilitate the transition from a specific to a general competition regime for maritime transport after the repeal of the exemption granted to liner conferences. The Guidelines applied for a period of five years, that is, until 26 September 2013. In May 2012, after undertaking a public consultation (see European Commission, 2012), it was confirmed that the Guidelines had served their purpose and were no longer needed. Therefore they were not renewed.

The reasons provided to justify the removal of the liner conferences block exemption granted by Regulation 1419/2006, were similar to those given in the 2002 OECD Report (OECD, 2002a), specifying that “a thorough review of the industry carried out by the Commission has demonstrated that liner shipping is not unique as its cost structure does not differ substantially from that of other industries. There is therefore no evidence that the industry needs to be protected from competition.”<sup>50</sup>

It was also concluded that liner conferences no longer fulfil the four cumulative conditions for a legislative exemption adopted under Article 101(3) of the TFEU and so the block exemption granted in respect of such conferences should be abolished. In addition, it provides detailed explanations as to why none of the four conditions of Article 101(3) TFEU are satisfied.<sup>51</sup> The explanations are particularly useful to understand the likely arguments that may be used by the European Commission, national competition and regulatory authorities, and also national courts, when considering various arrangements that are likely to restrict competition among shipping lines, now that the block exemption for liner conferences has expired. Therefore they will be outlined in some detail below.

Regarding the *first* condition for exemption, under Article 101(3), requiring that the restrictive agreement contributes to improving the production or distribution of goods or to promoting technical or economic progress (efficiency gains), paragraph 4 of Regulation 1419/2006 explains that:

[L]iner conferences are no longer able to enforce the conference tariff although they still manage to set charges and surcharges which are a part of the price of transport. There is also no evidence that the conference system leads to more stable freight rates or more reliable shipping services than would be the case in a fully competitive market. Conference members increasingly offer their services via individual service agreements entered into with individual exporters. In addition, conferences do not manage the carrying capacity that is available as this is an individual decision taken by each carrier. Under current market conditions price stability and the reliability of services are brought about by individual service agreements. The alleged causal link between the restrictions (price fixing and supply regulation) and

<sup>48</sup> See Regulation 1490/2007 of the European Parliament and of the Council, Official Journal of the European Union. 2007. L 332: 1, 18 December, which repealed Regulation 954/79.

<sup>49</sup> See *Opinion of the European Economic and Social Committee on the Liner Conferences-United Nations Convention*, COM (2006) 869 final, Official Journal of the European Union. 2007. C 256: 62, 27 October, paragraph 2.5. EU Member States having ratified or acceded to the Convention as of October 2007 included: Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Italy, Malta, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom. Norway, an EEA member has also acceded to the Code (16 States Parties). Since then, six out of these, namely, Bulgaria, Denmark, Germany, Malta, the Netherlands and the United Kingdom, have denounced the Convention.

<sup>50</sup> Regulation 1419/2006. Official Journal of the European Union, 2006. L 269: 1. 28 September, paragraph 3.

<sup>51</sup> *Ibid.*, paragraphs 4–8.

the claimed efficiencies (reliable services) therefore appears too tenuous to meet the first condition of Article [101(3)].

Concerning the *second* condition for exemption under Article 101(3), stating that consumers must be compensated for the negative effects resulting from the restriction of competition (fair share for consumers), paragraph 5 of Regulation 1419/2006 explains that:

In the case of hard core restrictions, such as horizontal price fixing which occur when the conference tariff is set and charges and surcharges are jointly fixed, the negative effects are very serious. However no clearly positive effects have been identified. Transport users consider that conferences operate for the benefit of the least efficient members and call for their abolishment. Conferences no longer fulfill the second condition of Article [101(3)].

The *third* condition for exemption under Article 101(3) is that the conduct must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of its objectives (indispensability). With respect to this, paragraph 6 of Regulation 1419/2006 explains that:

Consortia are cooperative agreements between liner shipping lines that do not involve price fixing and are therefore less restrictive than conferences. Transport users consider them to provide adequate, reliable and efficient scheduled maritime services. In addition the use of service agreements has increased significantly in recent years. By definition, such individual service agreements do not restrict competition and provide benefits to exporters as they make it possible to tailor special services. Furthermore, because the price is established in advance and does not fluctuate for a predetermined period (usually up to one year), service contracts can contribute to price stability. It has therefore not been established that the restrictions of competition permitted under Regulation (EC) No 4056/86 (price fixing and capacity regulation) are indispensable for the provision of reliable shipping services to transport users as these can be achieved by less restrictive means. The third condition under Article [101(3)] is therefore not satisfied.

Finally, the *fourth* condition under Article 101(3) requires that the conference should remain subject to competitive constraints (no elimination of competition). Regarding this, paragraph 7 of Regulation 1419/2006 notes that while conferences are present in nearly all major trade lanes and compete with carriers grouped in consortia and with independent lines, this is not sufficient for price competition to effectively take place. This is because:

Whilst there may be price competition on the ocean freight rate due to the weakening of the conference system there is hardly any price competition with respect to the surcharges and ancillary charges. These are set by the conference and the same level of charges is often applied by non-conference carriers. In addition, carriers participate in conferences and consortia on the same trade, exchanging commercially sensitive information and cumulating the benefits of the conference (price fixing and capacity regulation) and of the consortia (operational cooperation for the provision of a joint service) block exemptions. Given the increasing number of links between carriers in the same trade, determining the extent to which conferences are subject to effective internal and external competition is a very complex exercise and one that can only be done on a case by case basis.

## 2. Consortia and other non-ratemaking agreements

Despite the ban of liner conferences as from 18 October 2008, liner shipping consortia continue to enjoy a block exemption from the application of Article 101 TFEU. They are still allowed as a form of operational cooperation between liner shipping companies with a view to providing joint maritime cargo transport services, provided the consortia agreement does not involve rate fixing or anything other than temporary capacity cuts. The block exemption to liner shipping consortia was due to expire on 25 April 2010<sup>52</sup> but

---

<sup>52</sup> See Article 2 of European Commission Regulation 611/2005, modifying Regulation 823/2000, and extending *inter alia* the block exemption for consortia until 25 April 2010.

the European Commission adopted *Regulation 906/2009*<sup>53</sup> renewing the block exemption, for a further 5 years, that is, until 25 April 2015.

According to Regulation 906/2009, in order to qualify for the exemption, the combined market share of the participants to a consortium must not exceed 30 per cent.<sup>54</sup> The block-exemption allows the following activities by consortiums:

1. The joint operation of liner shipping services including any of the following activities:
  - (a) the coordination and/or joint fixing of sailing timetables and the determination of ports of call;
  - (b) the exchange, sale or cross-chartering of space or slots on vessels;
  - (c) the pooling of vessels and/or port installations;
  - (d) the use of one or more joint operations offices;
  - (e) the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment;
2. Capacity adjustments in response to fluctuations in supply and demand;
3. The joint operation or use of port terminals and related services (such as lighterage or stevedoring services);
4. Any other activity ancillary to those referred to in points 1, 2 and 3 which is necessary for their implementation, such as:
  - (a) the use of a computerized data exchange system;
  - (b) an obligation on members of a consortium to use in the relevant market or markets vessels allocated to the consortium and to refrain from chartering space on vessels belonging to third parties;
  - (c) an obligation on members of a consortium not to assign or charter space to other vessel-operating carriers in the relevant market or markets except with the prior consent of the other members of the consortium.<sup>55</sup>

The exemptions listed above shall not apply to a consortium which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, has as its object:

1. the fixing of prices when selling liner shipping services to third parties;
2. the limitation of capacity or sales except for the capacity adjustments referred to in Article 3(2);
3. the allocation of markets or customers.<sup>56</sup>

These are the hardcore restrictions which include activities not allowed to shipping lines under any circumstances.

On 14 December 2010, the Commission adopted a revised set of Guidelines (Horizontal Guidelines)<sup>57</sup> and two Regulations<sup>58</sup> which describe how competitors can co-operate without infringing EU competition rules, or the so-called “hard core” restrictions of competition mentioned above. Although these were not adopted specifically for shipping lines, but mainly to assist small and medium sized-companies, they are also worth noting. The two Regulations specifically exempt from the competition rules certain research and development, specialization and production agreements that are unlikely to raise competition

<sup>53</sup> Official Journal of the European Union, 2009. L 256: 31. 29 September.

<sup>54</sup> Ibid., Article 5. Conditions related to market share.

<sup>55</sup> Ibid., Article 3. Exempted agreements. Also excluded from the scope of application of Article 101 TFEU, are technical arrangements covered by Article 2 of Regulation 4056/86, which will continue to be available to shipping lines, since they do not affect competition.

<sup>56</sup> Ibid., Article 4. Hardcore restrictions.

<sup>57</sup> Official Journal of the European Union. 2011. C 11: 1, 14 January.

<sup>58</sup> Commission Regulation No 1217/2010 of 14 December 2010, Official Journal of the European Union, 2010. L 335:36, 18 December; and Commission Regulation No 1218/2010 of 14 December 2010, Official Journal of the European Union, 2010. L 335:43, 18 December.

concerns. The Horizontal Guidelines provide a framework for the analysis of the most common forms of horizontal co-operation such as agreements in the areas of research and development, production, purchasing, commercialization, standardization, standard terms, and information exchange. In addition, the Horizontal Guidelines recognize the benefits of information exchange for competition as follows:

57. Information exchange is a common feature of many competitive markets and may generate various types of efficiency gains. It may solve problems of information asymmetries, thereby making markets more efficient. Moreover, companies may improve their internal efficiency through benchmarking against each other's best practices. Sharing of information may also help companies to save costs by reducing their inventories, enabling quicker delivery of perishable products to consumers, or dealing with unstable demand etc. Furthermore, information exchanges may directly benefit consumers by reducing their search costs and improving choice.

The Horizontal Guidelines also address in great detail, and provide concrete examples regarding the issue of information exchange, and situations where such exchange is most likely to come within the scope of Article 101 TFEU, as anti-competitive. In fact, regarding information exchange, it has been argued that there is no good theory that indicates which role it actually plays in determining whether a market is competitive or tacitly collusive.<sup>59</sup> In the absence of such a theory "each case must be assessed on its own facts according to the general principles set out in these ... (horizontal) guidelines".<sup>60</sup>

In summary, the following restrictions of competition, considered as hard core restrictions do not fall within a block-exemption, and are null and void:

- discussing or fixing prices, surcharges, discounts and rebates;
- agreeing levels of capacity and utilization;
- rationalization of capacity;
- allocating customers or regions;
- discussing relations with particular customers or suppliers;
- planned service launches and service characteristics;
- exchanging confidential information that might be of influence on the competition position of the participants of third parties (Braakman, 2013: 17).

Thus, in the EU, only certain categories of consortia, based on the share of the trade which they cover, profit automatically from the block exemption from the prohibition of restrictive arrangements contained in Article 101 TFEU. Therefore, a consortium which has a market share higher than the 30 per cent would require an individual exemption.

### *3. Capacity stabilization and discussion/talking agreements*

In the case of EU, agreements between conference and non-conference members do not benefit from a block exemption. Considering external competition to conferences as an essential factor, the European Commission views such agreements as a cause for concern, and scrutinizes them with great attention.

## ***B. The United States of America***

In the United States, antitrust exemptions in the maritime sector started with the *Shipping Act of 1916*. It was followed by the *Shipping Act of 1984* which permits conference agreements if not disapproved by the Federal Maritime Commission (FMC). Current United States legislation in the field consists of the *Ocean Shipping Reform Act (OSRA)*, which was adopted in 1998, and took effect in May 1999.

<sup>59</sup> See Braakman, 2013, footnote 67, citing Walker, 2012. EMLO Roundtable discussion. 19 June 2012.

<sup>60</sup> Horizontal Guidelines, paragraph 22.

Although OSRA did not remove antitrust exemptions for liner shipping conferences, it made a few adjustments to the *Shipping Act of 1984*. The main changes introduced relate to service contracts. For the first time in the history of the United States shipping policy, OSRA made it possible for any ocean carrier, including conference members, to negotiate independent service contracts with shippers, with an inability of conferences to prevent their members from entering into such contracts. The other important change was the enhanced confidentiality of service contracts between shippers and ocean carriers. As before, service contracts are filed confidentially with the FMC, but now fewer terms are public information. For instance, the rates are no longer publicly filed, and only the origin and destination port, the commodities involved, the minimum volume or portion, and the duration of the contract are made public. In addition, the parties to a contract can agree to keep all, or a portion of the contract confidential from their competitors, and conferences may not deter them in any way. In addition, with respect to conference agreements, “OSRA has maintained antitrust immunity for concerted carrier actions, but has limited the permissible activities subject to such immunity. Agreements no longer may limit or prohibit service contracting by their members. Moreover, agreements are precluded from requiring members to disclose their service contract negotiations or the details of any contracts into which they have entered. An agreement may publish general guidelines applicable to members’ individual contracting practices, but these guidelines must be voluntary and non-enforceable by the agreement and filed confidentially with the Commission” (see Federal Maritime Commission, 2000: 3).

Thus, although in principle conferences may still collectively fix rates and other terms, their agreements are no longer binding. As a practical matter, United States shipping is open to free competition, except for the fact that the carriers are not subject to antitrust. Accordingly, they may share price information, agree to non-binding guidelines for rates and terms of service, adopt common non-binding tariffs, etc. (see Federal Maritime Commission, 2000: 3; Sagers, 2006: 802).

According to a 2001 FMC Report on the Impact of OSRA (Federal Maritime Commission, 2001), after two years of operations, OSRA was generally achieving its objective of promoting a more market driven, efficient liner shipping industry. During the same period, there was a rapid and vast switch (a 200 per cent increase) to service contracts and very little traffic (e.g. less than 10 per cent of the United States-Europe traffic) took place directly under conference terms. In practice, conferences have disappeared on routes to and from the United States. The last one, the Trans-Atlantic Conference agreement (TACA) covering traffic with Europe, was dissolved on 1 October 2008 with the entry into force of Regulation 1490/2006.

In March 2001, a bill<sup>61</sup> was introduced in the United States Congress, which aimed to repeal antitrust immunity for ocean carriers but retain such immunity for maritime terminal operators. The bill managed to gather some support, but it resulted in no action by Congress. Later on, in 2009, following a period of rate instability and pressure on carriers, accompanied by container availability problems and carrier-shipper service contract disputes, another bill<sup>62</sup> was introduced in the United States Congress, which mainly suggested the elimination of conference price fixing and discussion agreements. However, there is no indication of any further action by Congress.

In January 2012, the FMC published a *Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law* (Federal Maritime Commission, 2012.)<sup>63</sup> By assessing whether the repeal of the conference block exemption has had any negative impact on United States liner trades, the Commission aimed to determine whether any changes to its current regulations or oversight activities were needed. Based on an analysis of available information from 2006 through 2010, the study’s primary

---

<sup>61</sup> HR 1253. Free Market Antitrust Immunity Reform (FAIR) Act of 2001.

<sup>62</sup> Oberstar Bill, HR 6167, Shipping Act of 2010. For a summary of the bill see <http://beta.congress.gov/bill/111th-congress/house-bill/6167>.

<sup>63</sup> The study focused on the three main East/West liner trades and, in particular, a comparative assessment of two Asia-based trades – the Far East/United States trade and the Far East/North Europe trade.

finding was that no significant changes in rate levels occurred between EU and United States liner trades due to the repeal. For instance, during the period examined, the repeal of the block exemption appeared not to have put United States shippers at a disadvantage to EU shippers in Far East trades (Federal Maritime Commission, 2012: viii.)

### *C. Selected countries*

#### *1. Conferences*

Originally, immunities that were granted to conferences were very broad in “ship-owning countries” such as Japan, European Community, etc. and of a more conditional nature in “shipper countries” such as Australia, Canada, the United States, with obligations for filing the agreements, opening of the conferences to any shipowner wishing to participate, equal treatment for shippers, and the right to fix tariffs independently of conferences (see WTO, 2010: 23).

In Canada, the Shipping Conference Exemption Act was amended in 2001 in order to introduce the notion of confidential service contracts, similar to OSRA 1998 in the United States. The amendments entered into force in January 2002. In addition, one report<sup>64</sup> by the Canadian Transportation Review Panel, published in June 2001, stated that “shipping conferences are likely to continue to lose influence as increasing amounts of traffic are carried under independent contracts or by non-conference carriers. Nevertheless, the Panel favours removing artificial barriers to competition, as the guarantee of cost efficiency among carriers and of service and price to users.” The Panel recommended that “the government make clear its commitment to eventual elimination of the liner conference exemptions from competition law and that it actively pursue multilateral agreement among international partners to do so.”<sup>65</sup>

In Australia, several reports have been issued on the issue of liner shipping conferences exemptions. The Australian the Productivity Commission, and independent research and advisory body, conducted an inquiry into the justification for and possible alternatives to continued industry specific competition regulation for liner shipping, during 2004–2005. The inquiry report<sup>66</sup> found that agreements which fix prices and control the supply of shipping to a trade route pose the greatest anticompetitive risks, and recommended repeal of the liner industry exemption (Part X of the Trade Practices Act of 1974) from otherwise applicable competition law. Although anti-trust immunity for conferences was not abolished, in line with the recommendations issued by the Productivity Commission, the Government prohibited all shipowner groups, including conferences, from inhibiting in any way their members’ capacity to conclude services contracts. Penalties and provisions concerning the lodging of complaints by shippers were reinforced and a net public benefit requirement was introduced (WTO, 2010: 24). In addition, in March 2015, in the Final Report on Competition Policy Review for Australia,<sup>67</sup> it was recommended that exemptions for liner shipping be repealed, and “the liner shipping industry should be subject to the normal operation of the Competition and Consumer Act 2010. The Australian Competition and Consumer Commission should be given power to grant block exemptions ... for conference agreements that meet a minimum standard of pro-competitive features.”

---

<sup>64</sup> Vision and balance. Report of the Canada Transportation Act Review Panel. June 2001. Available at: <http://publications.gc.ca/collections/Collection/T22-107-2001E.pdf>.

<sup>65</sup> Ibid.: 146.

<sup>66</sup> Review of Part X of the Trade Practices Act 1974: International Liner Cargo Shipping. Productivity Commission Inquiry Report No. 32. 23 February 2005. Available at: <http://www.pc.gov.au/inquiries/completed/cargo-shipping-2005/report/partx.pdf>.

<sup>67</sup> Available at: [http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report\\_online.pdf](http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf).



New Zealand's Productivity Commission undertook, in July 2011, a study of its international freight transport service, which would also address liner shipping antitrust immunity. The final findings of the study, released in April 2012, stated that current exemptions for shipping companies from the Commerce Act should be removed so that normal competition laws apply. This change would outlaw any agreements between shipping lines that fix prices and/or limit capacity unless the Commerce Commission judges that their public benefits outweigh any anti-competitive detriments.<sup>68</sup> The Government issued its response to the Productivity Commission inquiry in December 2012. It subsequently acted on the recommendation to remove the exemption of international shipping lines from the competition provisions of the Commerce Act, by introducing provisions in the Commerce (Cartels and Other Matters) Amendment Bill to remove the exemption.<sup>69</sup> Shipping lines would nevertheless, as in other sectors and industries, be able to seek an "authorization" from the Commerce Commission for collaborative arrangements that have benefits for the public that likely outweigh the detriments. The Bill also proposes a "clearance" regime to allow applicants to test with the Commission whether a proposed collaboration would raise competition issues.<sup>70</sup>

In Israel, liner shipping agreements and other forms of transport by sea enjoyed antitrust exemption, and carriers could enter in all kinds of agreements without needing prior approval by the Israeli Antitrust Authority. However, in 2010, the exemption of liner shipping from the application of competition law in trades to and from Israel was repealed (see OECD, 2011).

Japan and the Republic of Korea already have laws that exempt liner shipping agreements from their competition law. In Japan, the government, following questions raised by the Japan Fair Trade Commission regarding adjustments to the current regulatory system, undertook in-depth studies on the competition policy of other countries, changes in the maritime transport sector, the stabilizing function of agreements between shipowners, and the impact that the abolition of immunity would have on the Japanese economy (WTO, 2010: 24). Following such studies, antitrust immunity to carrier agreements, including conferences, was extended until 2015.

In Singapore, a review conducted by the Competition Commission of Singapore (CCS), assessing the necessity of continuing Singapore's block exemption for liner shipping agreements, was conducted between January and December 2010. Based on the CCS review findings, on 16 December 2010, the block exemption was extended for five years (until 31 December 2015) without substantial changes in its scope.

It appears that some countries including Brazil, China, Hong Kong (China), Malaysia, the Russian Federation, South Africa and Turkey, among others, have never established exemptions to liner shipping conferences (OECD, 2015: 23). In China, maritime competition legislation (International Maritime Transport Regulations of December 2002, consolidated in 2007), provides that conference agreements or other agreements between shipowners are to be filed with the Shanghai Shipping Exchange, which has been designated as the delegated authority for this purpose. It also prohibits undeclared shipper discounts, introduces sanctions for abuses of dominant position, stipulates that shipping companies are to have a local representative in China, and sets forth requirements concerning shipper consultations. In 2008, China also enacted a general competition law<sup>71</sup> banning horizontal price fixing agreements (potentially including conferences). However, it appears unclear how this may link with the legislation of a specifically maritime nature. Under the Chinese competition regime, expanding market share, adding more capacity and forming alliances themselves is not against the rules, but price dumping is. Regulators

---

<sup>68</sup> For more information, see <http://www.productivity.govt.nz/inquiry-content/1508?stage=4>.

<sup>69</sup> The Bill was still awaiting its approval in Parliament. For latest status see [http://www.legislation.govt.nz/bill/government/2011/0341/latest/DLM5188721.html?search=ts\\_act%40bill%40regulation%40deemedreg\\_Commerce+\(Cartels+and+Other+Matters\)+Amendment+Bill\\_resel\\_25\\_a&p=1](http://www.legislation.govt.nz/bill/government/2011/0341/latest/DLM5188721.html?search=ts_act%40bill%40regulation%40deemedreg_Commerce+(Cartels+and+Other+Matters)+Amendment+Bill_resel_25_a&p=1)

<sup>70</sup> For more information see <http://www.productivity.govt.nz/inquiry-content/1508?stage=4>.

<sup>71</sup> Anti-monopoly Law of the People's Republic of China, adopted on 30 August 2007. Entry into force on 1 August 2008. Available at: [http://www.china.org.cn/government/laws/2009-02/10/content\\_17254169.htm](http://www.china.org.cn/government/laws/2009-02/10/content_17254169.htm).

also punish anyone abusing market dominance and ban those with a strong possibility of doing so (see WTO, 2010: 25).<sup>72</sup>

India is also implementing its competition law without an exemption for liner shipping agreements. In September 2007, following an earlier recommendation by a government-appointed commission, to abolish the shipping conference system, the Competition Commission of India ordered shipping companies to desist from anti-competitive behaviour. In May 2009, India commissioned an economic study and, once it was completed, a decision would be made on whether to issue an exemption (see WTO, 2010: 24), (Federal Maritime Commission, 2012: 145), (WTO, 2012, section S).

## 2. Consortia and other non-ratemaking agreements

The treatment of consortia under competition laws is variable. For example, in Australia, Canada, Japan, New Zealand and the United States, consortia agreements seem to be entitled to immunity from antitrust law, without reference to whether the agreement provides that ship operators should operate under uniform or common freight rates. In Norway, there is no legislation related to those joint activities of shipping lines, which go beyond the definition of a conference contained in its legislation. Since that definition provides that shipping lines operate under uniform or common freight rates, a consortium agreement, if it satisfies this condition, would be treated as a conference. However, if it does not, it would be directly subject to the general competition rules. Thus, the treatment of consortia is not clear in Norway (see WTO, 2010: 26), (OECD, 2002b: 18).

Thus elsewhere than in EU law, where they enjoy a block exemption, consortia do not appear to fall under any specific legal category, and are treated like any other arrangement among shipowners. In this period of the largest increase in ship size and risk of overcapacity, an important aspect is that consortia are able to retain the right of joint decision making in respect of capacity adjustment.<sup>73</sup> Other non-ratemaking agreements such as *Vessel Sharing Agreements* and *Global/Strategic Alliances*, have become frequent forms of cooperation, and depending on the jurisdiction concerned, may be linked to consortia.

Also worth noting is that the Asia-Pacific Economic Cooperation (APEC)<sup>74</sup> Transportation Working Group had commissioned consultants to undertake an analysis of non-rate making agreements in liner shipping and to develop recommended guidelines for the treatment of such agreements by economies in the Asia Pacific area. In general, the APEC studies, published in 2008, advocated the continuation of anti-trust immunity for shipowner agreements not involving price fixing and information exchange for APEC members. In this context, conferences could still be permitted provided that members were free to conclude service contracts.

The first study (APEC, 2008a), published in May 2008, found that in terms of regulations, Europe is the only region that has specific regulations regarding operational (consortia) agreements. All other jurisdictions either explicitly or implicitly cover operational agreements as part of regulations on conference ratemaking agreements. It was also found that there is a core area, upon which the vast majority of identified non-ratemaking agreements between carriers are focused, which covers the sharing of vessel operations. The vessel operation agreements are categorized in four types: alliance; vessel sharing; vessel space charters; and vessel space swaps. Clauses in these non-ratemaking agreements which covered:

<sup>72</sup> For further information on China's competition regulatory regime for shipping see, *Lloyd's List* (2014a). See also *Containerisation International*, 2014a.

<sup>73</sup> See for example page 15 above, EC Regulation 906/2009, Official Journal of the European Union, 2009. 256: 31. 28 September, paragraph 2. See also WTO, 2010: 26.

<sup>74</sup> An important economic forum, whose primary goal is to support sustainable economic growth and prosperity in the Asia-Pacific region. It has 21 members, and its cooperative process is mainly concerned with trade and economic issues. For more information see the APEC website <http://apec.org/>.

duration; termination and withdrawal; voting; new entrants; and sub-chartering, were found that could have an impact on competition.

The second and third study (APEC, 2008b), published together in November 2008, found that “non-ratemaking agreements have the potential to provide important operating efficiencies. They can lead to increased efficiency and improved quality of services to customers by taking advantage of genuine economies of scale and coordinating sailing schedules.” These benefits may be shared with users. However, “there are elements in non-ratemaking agreements that could in principle be anti-competitive elements, such as the ability to influence the behaviour of agreement members and restrict competition from current or potential competitors; market concentration and market share; and the exchange of information on confidential contracts. If this potential is realized, it may have negative effect on the interests of the shippers.” In addition, “given the fact that in a number of countries there is no specific regulatory regime for non-ratemaking agreements, some shippers have expressed the view that more appropriate and harmonized regulatory system should be established to further monitor non-ratemaking agreements, in order to ensure that carriers do not abuse their dominant position or eliminate fair competition.”

In addition, five general guidelines were suggested:

1. *Supporting non-ratemaking agreements in regulation* – As also accepted by the EU Competition Directorate and the European Shippers Council, such agreements are efficiency enhancing and the users can obtain a share of benefits;
2. *Separating rate-making and non-ratemaking agreements* – This will allow countries who wish to adopt different policies to the two to do so readily.
3. *Not using market share testing* – The benefits of imposing market share limits (e.g. 30 per cent market share limit imposed by the EU for consortia) are dubious; and in order to avoid difficulties of defining the relevant market and uncertainties whether the law is being met.
4. *Negotiating freely the duration of non-ratemaking agreement* – This encourages investing, reduces the extensive reorganization required and is best accomplished by commercial parties rather than set by a regulatory body arbitrarily.
5. *Collection and exchange of main information* – Good policy requires good information. As the industry evolves rapidly, it is important to detect undesirable trends and take prompt and effective action (APEC, 2008b: 42–50).

### 3. *Capacity stabilization and discussion/talking agreements*

As regards capacity stabilization and discussion/talking agreements, this is the area where the greatest divergence exists in their treatment under competition laws of various countries. Capacity stabilization agreements have always been banned for trade to and from the European Community (WTO, 2010: 25). In Australia, New Zealand, Norway and the United States, conferences or individual members of conferences are allowed to enter into agreements with non-conference shipping lines; and no special provisions for such agreements are laid down. In Australia, however, if these agreements have anti-competitive provisions, they must be registered to obtain the exemptions available under Part X of the Trade Practices Act 1974. In the United States, such agreements are subject to the regular oversight procedure by the FMC which is applied to every form of agreement between carriers. In Canada, although inter-conference agreements were exempted by the Shipping Conference Exemption Act, 1987, agreements between conference members and non-conference operators were not (OECD, 2002b: 20). In China, Japan and Singapore stabilization agreements are treated in the same way as conferences.

From a regulatory perspective, it appears that the distinction between conference agreements and stabilization/discussion agreements, where they continue to be applied side by side, is becoming less visible, and the competition authorities are seeking, on the one hand, to promote individual services contracts, and on the other, to prevent any group of shipowners from coordinating services contracts, freight rates and capacity regulation (WTO, 2010: 5). In addition, it has even been argued that discussion

agreements have replaced conference agreements as the primary vehicle for concerted carrier activity (Federal Maritime Commission, 2000: 4).

## V. GLOBAL ALLIANCES AND THEIR ASSESSMENT

In June 2013, the three biggest shipping lines in the world, Maersk, MSC and CMA CGM, announced that they intended to explore the possibilities of cooperation in the form of a global alliance, called the P3 network, in order to make their activities more efficient and more competitive. This announcement was made at a difficult time for the liner shipping industry, characterized by fluctuating freight rates, increasing costs and diminished profitability, combined with overcapacity in the container industry and unpredictable demand.

The P3 network was planned to operate a capacity of 2.6m TEU, initially 252 vessels, with initial market shares of about 42 per cent on the Asia-Europe route, 24 per cent on the transpacific and around 40 per cent on the transatlantic trade (*Lloyd's List*, 2013a, 2013b). On the global level, the three lines were estimated to have a combined 37.6 per cent of market share across all the routes. According to the P3 written vessel sharing agreement,<sup>75</sup> the schedules, slot allocations and utilization of the network vessels would be managed independently by a joint operating centre. However, the three participating member lines would continue to have separate identity, and the sales, marketing and customer services for each of them would be handled by separate commercial departments, implying that they intended to still compete on price. This arrangement would be for ten years, with any member that wished to withdraw required to give at least two years' notice, not earlier than eight years after the entry into force of the agreement.<sup>76</sup> At the time of the initial announcement, Maersk was intending to contribute 42 per cent, MSC 34 per cent, and CMA CGM 24 per cent of the total P3 capacity (*Lloyd's List*, 2013c). Shortly after the P3 alliance announcement, the G6 alliance composed of APL, Hapag-Lloyd, Hyundai Merchant Marine, MOL, NYK Line and OOCL, also announced its intention to expand its cooperation to trades between the Far East and the United States west coast and between northern Europe and the United States coasts.<sup>77</sup>

The respective P3 and G6 vessel sharing agreements<sup>78</sup> had to undergo scrutiny by relevant competition and regulatory authorities.<sup>79</sup> Actually, the FMC in the United States was the first to grant regulatory approval to the P3 alliance agreement on 20 March 2014. Also in March 2014, the FMC cleared the amendment to the G6 Alliance agreement that would allow the alliance to expand the scope of its cooperation. However, in both cases, the FMC announced that it would set up a monitoring system to check for anticompetitive commercial activity by the alliances' members (Federal Maritime Commission, 2014; *Lloyd's List*, 2014b).

In February 2014, it was announced that Evergreen, formally joined the CKYH alliance composed of Cosco, Hanjin, Yang Ming, and K-Line, resulting in a new expanded alliance, called CKYHE (*Lloyd's List*,

---

<sup>75</sup> Available at: [http://www2.fmc.gov/agreement\\_lib/012230-000-P.pdf](http://www2.fmc.gov/agreement_lib/012230-000-P.pdf).

<sup>76</sup> See Article 8.1 of the agreement.

<sup>77</sup> The G6 alliance was established since 2012, and its members already operate in the Asia-Europe and Asia-the United States east coast trades.

<sup>78</sup> The text of the G6 Alliance Agreement is available at: [http://www2.fmc.gov/agreement\\_lib/012194-002-P.pdf](http://www2.fmc.gov/agreement_lib/012194-002-P.pdf).

<sup>79</sup> Regulatory approval is required in some jurisdictions including China and the United States, while the European Commission requires consortia members to conduct a self-assessment to ensure that there is no abuse of dominant position where market share exceeds 30 per cent. A global summit was hosted by the United States Federal Maritime Commission on 17 December 2013, where competition regulators from China, the European Union and the United States held discussions on cooperative agreements between shipping lines, in order to gain a better understanding of the respective legal regimes, policies and views on implications for the international maritime sector. See *Lloyd's List*, 2013h, and *ShippingWatch*, 2014a.

2014c).<sup>80</sup> According to information from Alphaliner, the global market shares of the three big alliances, if approved, would be: P3-36.3 per cent, G6-17.8 per cent, and CKYHE-16.9 per cent.

The proposed alliances received a mixed response from shipper organizations and other actors. Main concerns expressed included those about their size, in terms of number and tonnage of ships, sailing frequency and port coverage, which could negatively affect smaller carriers,<sup>81</sup> as well as on their scope which crosses jurisdictions. Concerns have also been expressed about possible negative effects of alliances on shippers and fair competition in general. Such effects might increase even more, particularly for smaller developing countries, in a situation where a diminishing of the number of shipping companies in most markets has been observed during the last ten years. As stated in the 2013 edition of UNCTAD's Review of Maritime Transport, "the average [number of companies] per country has decreased by 27 per cent during the last 10 years, from 22 in 2004 to just 16 in 2013. This trend has important implications for the level of competition, especially for smaller trading nations. While an average of 16 service providers may still be sufficient to ensure a functioning competitive market with many choices for shippers for the average country, on given individual routes, especially on those serving smaller developing countries, the decline in competition has led to oligopolistic markets"(UNCTAD, 2013: 53).<sup>82</sup>

In order for the alliances to become operational, information has to be filed to the relevant authorities in the many jurisdictions to be covered by the carriers of these alliances. In some cases, the internal vessel sharing agreements among alliance members have required regulatory approval. Important factors for such approval have been the market share controlled by the member companies within each of the proposed alliances, along with the assessment of other aspects of the respective alliance agreements which may have an impact on competitive behaviour or results in the markets covered by those agreements. For instance, in the case of the European Commission assessing the proposed P3 alliance, it had to first establish whether the alliance was covered by the EC's block exemption for liner shipping consortia. The global market share for the proposed alliance exceeded the 30 per cent threshold limit set out in the Regulation,<sup>83</sup> therefore the consortia block-exemption did not apply. However, this did not automatically mean that the P3 agreement would be declared invalid. For consortia and alliances exceeding this market share threshold, it is the responsibility of the companies themselves to make sure that their agreements comply with Article 101 TFEU, and the Commission can decide to intervene, if necessary. The compatibility of their agreements with the EU competition rules was in fact subject to self-assessment by the proposed alliance members on an individual basis, and it could still get an exception if they would be able to show for example, that the overall efficiencies that would be gained from the P3 alliance would be passed on to shippers.<sup>84</sup> Also under scrutiny was access by other carriers, to terminals operated by the proposed alliance members. Another concern of the European Commission was the sharing of confidential information between proposed alliance members, particularly any possible exchange of information between their

---

<sup>80</sup> CYKHE also needed regulatory approval by relevant competition authorities.

<sup>81</sup> For instance, the combined market share of the proposed P3 and G6 alliances in the transatlantic trade lane was estimated to reach 80 per cent, and that might be a concern for other carriers. Concerns have been expressed that although alliance members may not fix prices, they may withhold capacity or share routes, not explicitly, but by implied agreement, which is much easier to reach than if there were a larger number of parties in the market. See *Lloyd's List*, 2014d, 2014e, 2013b.

<sup>82</sup> For an earlier relevant discussion on concentration, competition and the role of market players in liner shipping, see also ECLAC, 1998.

<sup>83</sup> The threshold of 30 per cent for an automatic block exemption from EU competition rules was set after the banning of the liner conferences in 2008. Before, non-conference lines that were consortia members were allowed to have a market share of 35 per cent, with conference carriers allowed only 30 per cent. In some other jurisdictions, such as the United States or Singapore, the market share for consortia to benefit from a block exemption is up to 50 per cent. See *Lloyd's List*, 2013d.

<sup>84</sup> Some have suggested that while these efficiencies will initially be passed on, in the long term, the alliance will force smaller players out of the market, leading to decreased competition and higher freight rates, and will ultimately lead to deterioration in quality and service. See *Lloyd's List*, 2013e.

commercial departments and the independent operating network centre, which could affect the competition in EU markets.<sup>85</sup>

In addition to considering individual cases and conducting competitive assessments,<sup>86</sup> the European Commission regularly carries out sector inquiries. These are investigations into sectors of the economy and into types of agreements across various sectors, when the Commission believes that a market is not working as well as it should, and also believes that breaches of the competition rules might be a contributory factor. The Commission may ask for information, such as price information from businesses or business associations, which help it understand a particular market better from the point of view of competition policy, and also assess whether it needs to open specific investigations later. The results of sector inquiries are published in a report and interested parties are invited to submit their comments. The transport sector has not been subject of such an inquiry so far.<sup>87</sup>

Actually, in June 2014, the European Commission declared it did not find any anti-competitive issues and had no objections to the proposed P3 alliance and its vessel-sharing agreement (*Journal of Commerce*, 2014a). However, two weeks later, following a review under China's merger control rules, the Chinese competition authorities rejected the P3 alliance, bringing to a stop the preparatory work for its establishment as originally planned.<sup>88</sup>

In July 2014, two of the P3 parties, Maersk and MSC, announced a new vessel sharing agreement, and expressed the intention to establish a new alliance, called the 2M.<sup>89</sup> Later on, in September 2014, the new "Ocean Three" (O3) alliance was announced by three carriers, the remaining P3 partner, CMA CGM, United Arab Shipping Company (UASC) and Chinese CSCL, covering key trades such as East-West from Asia to Northern Europe, the Mediterranean and both North American coasts (see figures 1 and 2) (*Journal of Commerce*, 2014b; and *ShippingWatch*, 2014b). With the differing procedural frameworks, timelines and outcomes of the United States, EU and Chinese regulatory reviews of P3, and some regulatory uncertainty that followed for the 2M, the challenges faced by shipping alliances were highlighted, and it consequently became obvious that there was room for improvement in the procedures of global competition regulation of shipping (see *Containerisation International*, 2014b).

At the second Global Maritime Regulatory Summit<sup>90</sup> meeting, held in Brussels on 18 June 2015, with the participation of senior officials from the FMC, the Chinese Ministry of Transport and the European Commission, it was agreed that the increased co-operation in the liner trades needs to be monitored and warrants ever closer contact and better communication between competition and regulatory authorities

---

<sup>85</sup> For further information on the application of EU competition instruments in the various policy areas (antitrust, cartels, mergers, liberalization, state aid) and in various sectors of the economy, including transport, see European Commission's DGCOMP website [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html).

<sup>86</sup> For an example of competitive assessment of and defining the maritime transport sector, see the 2009 European Commission decision in Case No COMP/M.5450 – Kühne/HGV/TUI/Hapag Lloyd-Merger. Available at: [http://ec.europa.eu/competition/mergers/cases/decisions/m5450\\_20090206\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m5450_20090206_20310_en.pdf).

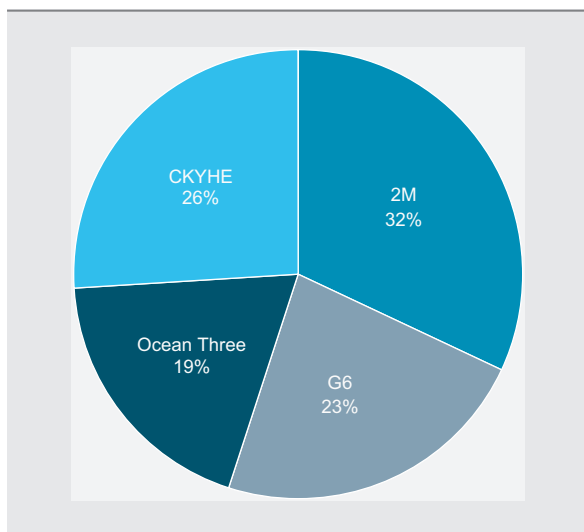
<sup>87</sup> For further information and reports of various sector inquiries see [http://ec.europa.eu/competition/antitrust/sector\\_inquiries.html](http://ec.europa.eu/competition/antitrust/sector_inquiries.html).

<sup>88</sup> China's competition authorities saw the P3 vessel agreement as constituting a de facto merger between the three carriers. China's Ministry of Commerce, stated that "Based on a comprehensive analysis of market share, market access and industry characteristics, Ministry of Commerce concludes that, if completed, the concentration will enable the operators to become a close-knit alliance, commanding 47% market share in Asia-Europe container liner service and will result in a significant increase in market concentration rate", "Therefore, Ministry of Commerce decides to forbid such concentration of business operators according to the Anti-Monopoly law." See *Lloyd's List*, 2014f and *ShippingWatch*, 2014c.

<sup>89</sup> The 10-year agreement would cover all three east-west trade lanes and include approximately 185 vessels with capacity of 2.1m teu. Maersk would be contributing some 110 ships accounting for 55 per cent of total 2M capacity, while MSC would provide around 75 ships with nominal capacity of 900,000 teu, or 45 per cent of the total. See *Lloyd's List*, 2014g.

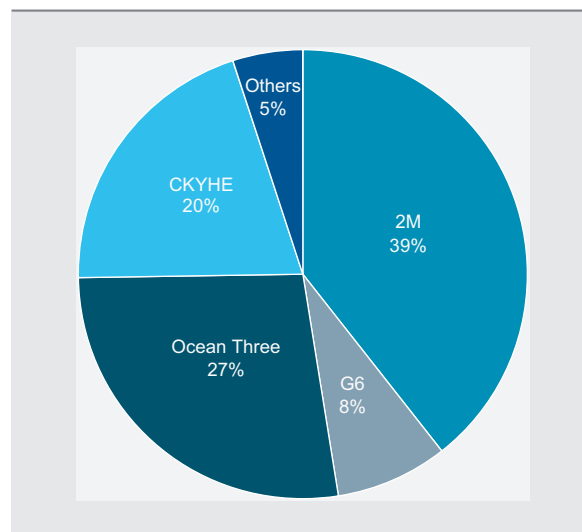
<sup>90</sup> The first summit took place in Washington, DC in December 2013.

**Figure 1**  
Capacity shares of four mega alliances  
in Asia–North Europe trade



Source: Drewry Maritime Research 2014.

**Figure 2**  
Capacity shares of four mega alliances  
in Asia–Med trade



Source: Drewry Maritime Research 2014.

(European Commission, 2015). In addition, the European Shippers' Council (ESC) has urged the regulators to be on their guard concerning the alliances, and has stressed the need for "prior control and monitoring" of cooperation between ship operators. In a White Paper issued before the summit, the ESC drew the attention of the three main competition authorities of the world – Ministry of Commerce from China, FMC from the United States and DGCOMP from EU – who have started regular consultation meetings since 2014, to the need to: (a) define the concept of "relevant market" used in competition analysis so that market shares are calculated uniformly; (b) establish a harmonized global public file to be submitted by all carriers who want to collaborate between themselves, which needs to include all the information needed to properly analyse the actual scope of cooperation as well as its governance structure and nautical resources used. Comments from industry and other stakeholders on these submissions should be allowed for consideration by competition authorities; and (c) get the legal authorization by their governing bodies to exchange information (eventually commercially sensitive) drawn from the various files submitted in order to cross check and consolidate the various data (see European Shippers' Council, 2015: 8; *Lloyd's List*, 2015a).

More recently, a lack of stability in membership of some of the global alliances has been observed, triggering several potential mergers and acquisitions involving their members.<sup>91</sup> This is not unknown, and has been linked to the fact that global alliance members continue to maintain their corporate identities to ensure that their relationship is reversible, if necessary. The process has also been described as a vicious circle: "Alliances are not stable and participants are therefore hesitant to make long-term commitments. The lack of long-term commitments precludes alliances from realizing the full potential of synergies and cost savings. This weakens their stability and promotes mergers to achieve the desired stability" (ECLAC, 1998). Despite this, the role of the global alliances as a suitable form of cooperation among carriers, and the operational and cost benefits they can offer, cannot be denied.

<sup>91</sup> For instance, the planned merger of Cosco (CKHYE) and China Shipping, or the offer of Hapag-Lloyd to acquire of APL – both members of G6 alliance, or that of CMA CGM to acquire NOL. For further information see *Lloyd's List*, 2015b and 2015c). Transactions will be subject to antitrust clearance and approval from relevant authorities in the United States, EU and China.

## VI. POTENTIAL UNCERTAINTIES AND OTHER CONSIDERATIONS

Worth noting in the context of liner shipping competition, is that although liner conferences enabling their members to fix freight rates collectively and discuss market conditions, have been banned in Europe since 2008, other jurisdictions including major trading countries, still allow them. For example, in Singapore, a major hub for many shipping companies, the block exemption for liner conferences was extended until December 2015. Many European shipping companies, including members of the alliances, are also members of various liner conference and other cooperation agreements still existing for non-European trades.<sup>92</sup> Thus, some carriers are still allowed to jointly set prices and regulate capacity in some trades, while they may not be allowed to do the same in trades to and from jurisdictions that do not provide for an exemption of liner shipping conferences and discussion agreements from their competition laws. Under these circumstances, a number of questions could arise, both as regards impacts on trade and prices, and legal uncertainties.

One question could be for instance whether when considering a certain alliance, the European Commission might decide that freight rate fixing within the conferences, allowed under the law of a non-EU country could affect the EU liner trades. Actually, it has already been argued that this might be likely if the actual collective market share of the alliance network is large. As regards legal uncertainties, a question has been whether it would be safer for EU shipping lines, under current circumstances, and absent any specific guidance from the European Commission, to resign from conferences outside the EU, rather than to risk possibly being found infringing EU competition law (Braakman, 2013: 24–25). In the meantime, a number of global carriers, including the proposed P3 partners, have been under antitrust investigation by the European Commission, concerning accusations of price signalling by these carriers through the announcement of rate increases without any transparency over actual price levels, potentially affecting price competition and harming consumers.<sup>93</sup>

It has also been argued that even if EU shipping lines might exit from liner conferences in order to avoid infringing EU competition law, shipping lines from non-EU countries that still maintain their conference membership, might claim they are protected by the Convention on a Code of Conduct for Liner Conferences, 1974, even in the case in which no EU shipping lines participate in the conference trade. Currently, the Convention has seventy-six Contracting States. Out of the sixteen EU member States that have ratified or acceded to it over the years, six have denounced it so far.<sup>94</sup> It has even been argued that these non-EU countries might contest that instruments adopted by the European Commission (particularly EU Regulations 1419/2006 and 1490/2007), prevent an EU Member State from fulfilling the antitrust exemption obligations it undertook when becoming a party to the Convention,<sup>95</sup> and could therefore amount to an infringement of an international obligation from that EU Member State. Moreover,

---

<sup>92</sup> For instance, in the case of the proposed P3 alliance members, the Transpacific Stabilization Agreement, the Asia-West Africa Trade Agreement, and the Asia West Coast South America Freight Conference. Altogether there are 65 conferences and agreements in the non-European trades. See *Lloyd's List*, 2013f.

<sup>93</sup> Investigation started after a series of raids that were conducted in their offices in May 2011. For more information see European Commission, 2013. For the 14 shipping lines facing antitrust proceedings from the European Commission, see *Lloyd's List*, 2013g. They are China Shipping Container Lines, CMA CGM, Cosco Container Lines, Evergreen Line, Hapag-Lloyd, Hanjin Shipping, Hyundai Merchant Marine, Maersk Line, MOL, Mediterranean Shipping Co, OOCL, NYK Line, United Arab Shipping Co and Zim Line.

<sup>94</sup> For more information on the status of international conventions in the field of maritime transport, prepared or adopted under the auspices of UNCTAD, see the website of the Trade Logistics Branch, Policy and Legislation Section, <http://unctad.org/en/Pages/DTL/TTL/Legal/Maritime-Conventions.aspx>. For official status information, see <http://treaties.un.org>.

<sup>95</sup> For example, Article 2.5 of the United Nations Code of Conduct states that “If, for any one of the countries whose trade is carried by a conference, there are no national shipping lines participating in the carriage of that trade, the share of the trade to which national shipping lines of that country would be entitled ... shall be distributed among the individual member lines participating in the trade in proportion to their respective share.” Ten EU Member States remain parties to the United Nations Code of Conduct, while only six of them have denounced it pursuant to its Article 50.2.



they may claim that the relevant EU Regulations were voted and approved when such EU Member State was a Party to the Convention (Munari, 2009: 54).

The extension by the European Commission of the existing consortia block exemption from EU competition rules until 25 April 2020 is also worth noting (European Commission, 2014). After a market investigation, conducted in 2013, which showed that the Commission's approach for such an extension was still valid, a period of public consultations on this issue was held from 27 February 2014 to 31 March 2014, and a number of replies to the consultation were submitted by organizations, public authorities, and companies.<sup>96</sup> For instance, the World Shipping Council<sup>97</sup> stated that "it is widely agreed that liner shipping consortia increase competition, expand service offerings, and encourage technical innovation. Those benefits of consortia are especially important today in the face of rising fuel prices, stagnant trade growth, the mandate to reduce air emissions, and economic pressures on carriers to cut costs and maximize the efficient utilization of vessel assets while maintaining quality service. The consortia block exemption regulation, by removing legal risk from the mix of factors that must be evaluated by carriers considering consortia, allows those carriers to enter into, amend, and leave consortia based on grounds of economic efficiency, not legal risk avoidance. That in turn, makes consortia more fluid, more efficient, and more responsive to market forces. Consortia are an integral part of the liner shipping industry, and they best serve the interests of all interested parties – shippers, carriers, regulators and the public – when the rules that govern them are plain and transparent. The consortia block exemption regulation provides that clarity and transparency..." Other replies submitted contained similar arguments, and generally supported the Commission's proposal to extend the applicable date of the consortia block exemption regulation until 25 April 2020.

In fact, shippers have generally supported consortia and vessel-sharing agreements as the most suitable form of cooperation among carriers, mainly because of the operational and cost benefits they offer. However, such support has not necessarily implied support for the EU consortia block exemption. For instance, shippers have generally argued that consortia and other forms of carrier cooperation should not be given any special treatment under EU competition law (Global Shippers Forum, 2014).<sup>98</sup> They have also argued that the proposed new global alliances may not need any block exemption regulations for their future cooperation agreements, and that sensitive areas under antitrust scrutiny may be better dealt with under self-assessment, rather than under ambiguous block exemption regulations. As regards permitted information exchange among members of the global alliances, it has been argued that the EU Horizontal Guidelines provide the necessary detailed guidance without the need to refer to the block exemption regulation (*Lloyd's List*, 2014h).

## VII. CONCLUDING REMARKS

As already indicated, important findings have been made in a number of reports and studies by international organizations over the years in respect of competition in liner shipping. For instance, while the European Commission re-examined its policies during 2003–2005, in particular with respect to the possibility of removing the block exemptions for conferences, no causal link was found between price fixing and reliable liner shipping services, and it was estimated that a repeal of the exemption would improve service

---

<sup>96</sup> Replies to the consultation are available at: [http://ec.europa.eu/competition/consultations/2014\\_maritime\\_consortia/index\\_en.html](http://ec.europa.eu/competition/consultations/2014_maritime_consortia/index_en.html).

<sup>97</sup> The 29 member companies of the World Shipping Council operate approximately 90 per cent of the global liner ship capacity, providing approximately 400 regularly scheduled services linking the continents of the world. Collectively, these services transport about 60 per cent of the value of global seaborne trade, or more than US\$ 4 trillion worth of goods annually. For more information see <http://www.worldshipping.org/>.

<sup>98</sup> The Global Shippers Forum is an NGO representing shippers' interests and that of their respective organizations from Asia, Europe, North and South America and Africa. For further information see its website, <http://www.globalshippersforum.com>.

quality, and lead to a moderate drop in prices and considerable reductions in charges and surcharges. Moreover, it was argued that this decrease in transport prices would provide developing countries the opportunity to increase imports and especially exports (European Commission, 2005). As also explained in previous sections of this paper, reports and studies by both OECD and the EU during the last decade have concluded that liner shipping is not unique as its cost structure does not differ substantially from that of other industries, and that there is therefore no sufficient evidence that the industry needs to be protected from competition.

It is a fact that also during the last decade, in many countries with regulatory regimes for liner shipping agreements in place, studies have been undertaken by national competition and other relevant bodies, and recommendations have been made for the eventual elimination of the liner conference exemptions from competition law. Such exemptions have gradually come under more scrutiny, and have been generally narrowed in scope as part of a trend towards more pro-competition arrangements. However, despite the introduction of increasingly strict conditions, mainly aimed at protecting the rights of shippers, it appears that except for the EU that has explicitly removed them, other major trading countries still formally retain the exemptions for liner shipping agreements, including conferences and discussion agreements, from their competition laws and rules.

In the meantime, during the past decade, EU competition law has gradually been applied to shipping agreements: conference agreements have been banned, while consortia agreements have generally been allowed under a block exemption. However, many countries have still been reluctant to amend their competition legislations, although often being less permissive than the EU regime. Arguments for this reluctance have been that the benefits of doing so could be small and outweighed by the risks associated with such a move, including receiving less efficient collaboration and less services from carriers, which could lead to economic losses and less competition.

However, the fact that countries have not explicitly banned conferences or removed the exceptions for conference agreements from their laws, might not necessarily imply that they favour the use of traditional rate-setting conferences over other forms of operational types of agreements, or service contracts between shippers and individual carriers. The APEC studies in 2008 for instance, found that most jurisdictions, except the EU, actually either explicitly or implicitly cover operational (consortia) agreements as part of regulations on conference ratemaking agreements. Also some countries that have recently established competition legal frameworks, have not provided for exemptions for liner shipping conferences.

In addition, these studies found that the vast majority of other identified non-ratemaking agreements (including vessel sharing agreements and global/strategic alliances) are focused on sharing of vessel operations, and their clauses could have an impact on competition. Moreover, non-ratemaking agreements have the potential to provide important operating efficiencies, and can lead to improved quality of services to customers by taking advantage of genuine economies of scale and coordinating sailing schedules. These studies also found that given the fact that in a number of countries there is no specific regulatory regime for non-ratemaking agreements, some shippers have expressed the view that a more appropriate and harmonized regulatory system should be established to further monitor non-ratemaking agreements, in order to ensure that carriers do not abuse their dominant position or eliminate fair competition. This is indeed an important recommendation, worth being pursued by all countries.

Thus, in the present situation, where countries all over the world are embracing competition as a means to their economic development, it appears that continuing to justify exemptions of traditional price-fixing liner conferences from competition laws, has become increasingly difficult. At the same time, there appears to be a tendency of the competition authorities in various countries to seek, on the one hand, to promote cooperation agreements other than conferences, and on the other, to discourage any group of shipowners from coordinating freight rates and capacity regulation. In these circumstances, carriers may continue to collaborate to achieve operational improvements, while the competition authorities ensure that the competition in the market is sufficient so that shippers benefit from eventual cost savings.

As far as developing countries are concerned, many of them do not operate shipping lines of an international scale, and therefore their regional trade is often dependent on foreign ship operators, who usually are beyond the reach of developing countries' national competition laws and policies. In these circumstances, for many of them, a multilateral approach could be the preferred option for protecting their interests. Unfortunately, the international community's efforts so far have not resulted in a standard legislative approach to liner conferences and other cooperative agreements, or in a globally endorsed, legally binding, multilateral agreement. The United Nations Convention on a Code of Conduct for Liner Conferences, the only international legal instrument that was ratified by a considerable number of States Parties during the 1970s and 1980s, has had only limited practical application, while instruments adopted at other international bodies, including OECD and regional organizations, have so far either been applicable only to a limited number of countries that are members of those organizations, or have been of a non-binding, recommendatory nature.

With respect to negotiations at the international level, particularly those aimed at achieving a potential binding multilateral agreement containing a set of competition law principles, including those applicable to maritime transport, the WTO would appear to be a suitable international body. This is due to its wide membership, as well as its enforcement and dispute settlement mechanisms that aim to ensure compliance with international agreements.<sup>99</sup> A legally binding international instrument might be the preferred solution for developing countries, which usually have weak bargaining power, insufficient national legal frameworks in the field of competition, and limited enforcement capacity, and therefore may need to rely more on such instruments to enforce competition rules. However, due to divergences in interests and positions between Member countries, a relevant multilateral agreement at the WTO appears unlikely to be finalized any time soon, at least not until a new round of negotiations. It is also of concern that many developing countries lack the expertise and experience to participate effectively in negotiations on a competition agreement.

It is a fact that maritime sector negotiations at the WTO so far have concentrated mainly on market access issues, and not so much on anti-competitive practices undertaken by liner conferences, and a set of principles and policies to deal with them. However, as explained in previous sections of this paper, while the GATS framework does not contain disciplines on competition, the possibility for WTO Members to undertake commitments in relation to competition issues still exists. Members have the possibility, pursuant to Article XVIII to undertake "additional commitments" in their schedule of commitments on matters not captured by Articles XVI (Market Access) or XVII (National Treatment), such as, for example, competition matters, including those related to maritime transport. Based on this and since a WTO agreement on competition is not on the table currently, one possible way forward could be for instance, that Members develop certain disciplines in relation to competition in maritime transport, and seek to get other Members to subscribe to them through "additional commitments". This would achieve a generalization of the adoption of certain principles of competition law and policy in maritime transport.

Another aim could be to reach a multilateral agreement on a common framework for international cooperation in relation to issues of competition in maritime transport. This is particularly relevant also due to the need to enhance the ability of competition agencies in the developing world to address competition concerns in this complex industry. In this context, bilateral agreements both between developing countries and between developed and developing countries could be beneficial, mainly as regards enhancing the cooperation in general, including: cooperation between national competition agencies of various countries, sharing of information, impact assessments and other measures among them.

Examples of cooperation include for instance, negotiations between the EU and African, Caribbean and Pacific (ACP) countries, which started in 2002 to conclude Economic Partnership Agreements (EPAs) –

---

<sup>99</sup> As regards ensuring compliance with multilateral agreements, the WTO dispute settlement mechanism is perceived to be quite effective. See Kearns, 2001.

“development focused” trade agreements.<sup>100</sup> In parallel, the EU has concluded a series of Free Trade Agreements (FTAs) with other developing countries in Asia, Latin America, and the Mediterranean countries.<sup>101</sup> In addition to trade provisions, FTAs also contain provisions on general competition issues, the precise content of which depends on the degree to which these countries had competition legislation in place when the FTAs were signed. In general, these provisions condemn anti-competitive behaviour and practices, deal with issues of State aid, and provide for cooperation, consultation, and/or mutual recognition of the parties’ respective competition authorities (Szepesi, 2004). As regards EPAs, with few exceptions, they only cover trade in goods and development cooperation. They also contain a clause to continue negotiations on a number of other issues, but there is no specific timeline for the finalization of the negotiations (ECDPM, 2014). For developing countries, this might imply potential negotiations on general competition issues. However, as was also the case with FTAs, the precise content of the provisions would normally depend on the state of the competition legislation in place in the specific country at the time of negotiations. Therefore, the extent to which negotiations could evolve beyond agreeing on general competition issues and principles, to involve specific and controversial liner shipping competition issues, is not easy to predict.

For some developing countries, pursuing increased competitiveness and the liberalization of maritime services, both through the adoption of relevant legislation at the national level and through negotiations, may prove beneficial as well, in terms of costs. Generally, it appears that increasing fair competition for maritime transport in international markets is not only unavoidable, but could also be preferable and beneficial for developing and developed countries alike, which should continue to work together towards finding the most acceptable solutions for all. On a global policy level, States and international bodies alike shall continue to cooperate to promote compatible regulatory approaches and international harmonization of competition laws applicable to liner shipping and the maritime transport sector in general, in order to reduce the potential for their conflicting application and non-compliance.

---

<sup>100</sup> For further information and an updated status of the EPA negotiations, see the European Commission website on economic partnerships <http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>.

<sup>101</sup> These include the Euro-Mediterranean Association Agreements (MED agreements), the EU-South Africa Trade, Development and Cooperation Agreement (TDCA), the EU-Mexico Global Agreement, and the EU-Chile Association Agreement.

## REFERENCES

- Alexandrou G, Gounopoulos D and Thomas HM (2014). Mergers and acquisitions in shipping. *Transportation Research Part E: Logistics and Transportation Review*, 61: 212–234.
- APEC (2008a). Liner shipping competition policy: Non-ratemaking agreements study (Stages 1). Asia-Pacific Economic Cooperation (APEC) Transport Working Group (TWG). May. Available at: [http://www.apec-tptwg.org.cn/new/Archives/tpt-wg32/Maritime/Final/08\\_tpt\\_Liner\\_Stage1.pdf](http://www.apec-tptwg.org.cn/new/Archives/tpt-wg32/Maritime/Final/08_tpt_Liner_Stage1.pdf).
- APEC (2008b). Liner shipping competition policy: Non-ratemaking agreements study (stages 2&3). Asia-Pacific Economic Cooperation (APEC) Transport Working Group (TWG). November. Available at: [http://www.apec-tptwg.org.cn/new/Archives/tpt-wg32/Maritime/Final/08\\_tpt\\_Liner\\_Stages%202and3.pdf](http://www.apec-tptwg.org.cn/new/Archives/tpt-wg32/Maritime/Final/08_tpt_Liner_Stages%202and3.pdf).
- Braakman AJ (2013). The anti-competitive effects of a globally concentrated, oligopolistic maritime market: From explicit to tacit collusion – an analysis based on the P3 network. *The Journal of International Maritime Law*, 19(5): 419–436.
- Containerisation International* (2014a). C3 under scrutiny. Chinese regulators turn their attention to the grouping of three home carriers, which are accused of rate dumping. September.
- Containerisation International* (2014b). Politics hinders regulatory co-operation. September.
- ECDPM (2014). FAQ-Economic Partnership Agreements. European Centre for Development Policy Management, Maastricht. Available at: <http://ecdpm.org/dossiers/dossier-economic-partnership-agreements/>.
- ECLAC (1998). Concentration in liner shipping: Its causes and impacts for ports and shipping services in developing regions. Document LC/G.2027. Economic Commission for Latin America and the Caribbean. 20 May. Available at: [http://repositorio.cepal.org/bitstream/handle/11362/31094/S985396\\_en.pdf?sequence=1](http://repositorio.cepal.org/bitstream/handle/11362/31094/S985396_en.pdf?sequence=1).
- European Commission (2005). Commission staff working document. Annex to the proposal for a Council Regulation repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services. Impact Assessment. Document SEC(2005) 1641. 14 December. Available at: [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2005/sec\\_2005\\_1641\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2005/sec_2005_1641_en.pdf).
- European Commission (2007). Proposal for a European Parliament and Council Regulation repealing Council Regulation (EEC) No 954/79 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences. Document COM(2006) 869 final. 30 January. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006PC0869&from=en>.
- European Commission (2008). Guidelines on the application of Article 81 of the EC Treaty to maritime transport services. *Official Journal of the European Union*, C 245/02. 26 September. Available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0926\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0926(01)&from=EN).
- European Commission (2012). Antitrust: Commission consults on future of maritime transport antitrust guidelines. Press Release. 4 May. Available at: [http://europa.eu/rapid/press-release\\_IP-12-446\\_en.htm](http://europa.eu/rapid/press-release_IP-12-446_en.htm).
- European Commission (2013). Antitrust: Commission opens proceedings against container liner shipping companies. Press Release. 22 November. Available at: [http://europa.eu/rapid/press-release\\_IP-13-1144\\_en.htm](http://europa.eu/rapid/press-release_IP-13-1144_en.htm).
- European Commission (2014). Antitrust: Commission extends validity of special competition regime for liner shipping consortia until April 2020. Press Release. 24 June. Available at: [http://europa.eu/rapid/press-release\\_IP-14-717\\_en.htm?locae=en](http://europa.eu/rapid/press-release_IP-14-717_en.htm?locae=en).
- European Commission (2015). Antitrust: Maritime summit between Commission, US and China boosts cooperation. Statement. 15 June. Available at: [http://europa.eu/rapid/press-release\\_STATEMENT-15-5226\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-15-5226_en.htm).
- European Shippers' Council (2015). Shippers, alliances and fair competition. Brussels. 14 June. Available at: [http://europeanshippers.eu/wp-content/uploads/2015/06/ESC\\_White\\_paper\\_on\\_competition\\_02.pdf](http://europeanshippers.eu/wp-content/uploads/2015/06/ESC_White_paper_on_competition_02.pdf).
- Evenett SJ and Clarke JL (2003). A multilateral framework for competition policy? In: State Secretariat of Economic Affairs and Evenett SJ, eds. *The Singapore Issues and The World Trading System: The Road to Cancun and Beyond*: 77–168.
- Federal Maritime Commission (2000). The Ocean Shipping Reform Act: An interim status report. Washington, DC, June. Available at: [http://www.fmc.gov/assets/1/Page/OSRA\\_INTERIM\\_STATUS\\_REPORT.pdf](http://www.fmc.gov/assets/1/Page/OSRA_INTERIM_STATUS_REPORT.pdf).
- Federal Maritime Commission (2001). The impact of the Ocean Shipping Reform Act of 1998. Washington, DC, September. Available at: [http://www.fmc.gov/assets/1/Page/OSRA\\_Study.pdf](http://www.fmc.gov/assets/1/Page/OSRA_Study.pdf).

- Federal Maritime Commission (2012). Study of the 2008 repeal of the liner conference exemption from European Union Competition Law. Washington, DC, January. Available at: [http://www.fmc.gov/assets/1/Documents/FMC\\_EU\\_Study.pdf](http://www.fmc.gov/assets/1/Documents/FMC_EU_Study.pdf).
- Federal Maritime Commission (2014). P3 agreement clears FMC regulatory review. Press Release. Washington, DC, 20 March. Available at: <http://www.fmc.gov/NR14-06/default.aspx?print=y>.
- Fink C, Mattoo A and Neagu IC (2001). Trade in international Maritime services: How much does policy matter. Policy Research Working Paper No. 2522. World Bank, Washington, DC.
- Global Shippers Forum (2014). The 2009 block exemption regulation for liner shipping consortia should be allowed to expire – submission to the European Commission by the Global Shippers Forum (GSF). 17 January. Available at: [http://www.globalshippersforum.com/export/sites/gsf/content/email\\_downloads/GSF\\_Consortia\\_Submission\\_2014\\_-\\_v1\\_2\\_3\\_4\\_.pdf](http://www.globalshippersforum.com/export/sites/gsf/content/email_downloads/GSF_Consortia_Submission_2014_-_v1_2_3_4_.pdf).
- Journal of Commerce* (2014a). EU regulators clear P3. 3 June.
- Journal of Commerce* (2014b). Market share in key trades will be key issue for 2M approval. 11 July.
- Kearns JE (2001). International competition policy and GATS: A proposal to address market access limitation in the distribution services sector. *University of Pennsylvania Journal of International Economic Law*, 22(2): 285–323.
- Lloyd's List* (2013a). FMC asks P3 for more information. 6 December.
- Lloyd's List* (2013b). Asian Shippers Council fears the worst from the P3 tie-up. 21 November.
- Lloyd's List* (2013c). P3 allies hint at 19,200 TEU ships for US trades. 29 October.
- Lloyd's List* (2013d). Lawyer calls for liner consortia rules to be amended. 28 October.
- Lloyd's List* (2013e). German shippers wary of P3. 31 December.
- Lloyd's List* (2013f). P3 threatens non-EU conferences. 25 October.
- Lloyd's List* (2013g). Shipping lines facing antitrust proceedings revealed. 26 November.
- Lloyd's List* (2013h). FMC global summit produces 'open and candid' discussions. 18 December.
- Lloyd's List* (2014a). Is China's transport ministry a competition body for shipping? 8 August.
- Lloyd's List* (2014b). FMC clears G6 amendment. 3 April.
- Lloyd's List* (2014c). Evergreen formally joins CKYH on Asia-Europe trades. 20 February.
- Lloyd's List* (2014d). NITL urges antitrust authority to look at combines P3 and G6 impact. 12 February.
- Lloyd's List* (2014e). China Shipping opposes P3 in China. 19 February.
- Lloyd's List* (2014f). Beijing takes tough stance to outlaw P3. 17 June.
- Lloyd's List* (2014g). Maersk and MSC's 2M partnership to cover all three east-west trade lanes. 10 July.
- Lloyd's List* (2014h). A DIY approach to regulation. 14 March.
- Lloyd's List* (2015a). Maritime regulators to deepen co-operation on alliance monitoring. 19 June.
- Lloyd's List* (2015b). APL fleet would lift CMA CGM to pole position on Pacific. 26 November.
- Lloyd's List* (2015c). Shipping alliances reshuffle may take time to pan out. 9 December.
- Meersman H, Sys C, Van de Voorde E and Vanelslender T (2015). L'histoire se répète? Current competition issues in container liner shipping. OECD Working Party No. 2 on Competition and Regulation on 19 June. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2\(2015\)5&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2(2015)5&docLanguage=En).
- Munari F (2009). Liner shipping and antitrust after the repeal of Regulation 4056/86: A new era of global maritime confrontation? *Lloyd's Maritime and Commercial Law Quarterly*, 1: 42–56.
- OECD (1998). MTC conclusions on work on promotion of compatibility of competition policy applied to International Liner Shipping including multimodal transport with maritime leg. Document DSTI/SI/MTC(98)1, Organisation for Economic Cooperation and Development, Paris, 22 January. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SI/MTC\(98\)1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SI/MTC(98)1&docLanguage=En).
- OECD (2001). OECD offers guidance for re-assessing anti-trust exemptions in the liner shipping Sector. Organisation for Economic Cooperation and Development, Paris, 29 November. Available at: <http://www.oecd.org/newsroom/oecdoffersguidanceforre-assessinganti-trustexemptionsinthelinershippingsector.htm>.
- OECD (2002a). Competition policy in liner shipping: Final report. Document DSTI/DOT(2002)2, Organisation for Economic Cooperation and Development, Paris, 16 April. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/DOT\(2002\)2&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/DOT(2002)2&docLanguage=En).

- OECD (2002b). Regulatory issues in International Maritime Transport. Document DSTI/DOT(2001)3. Organisation for Economic Cooperation and Development, Paris, 8 March. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/DOT\(2001\)3&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/DOT(2001)3&docLanguage=En).
- OECD (2011). Annual report on competition policy developments in Israel 2010. Document DAF/COMP/AR(2011)9, Organisation for Economic Cooperation and Development, Paris, 15 June. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/AR\(2011\)9&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/AR(2011)9&docLanguage=En).
- OECD (2015). Competition issues in liner shipping: Note by the Secretariat. Document DAF/COMP/WP(2015)3. Organisation for Economic Cooperation and Development, Paris, 10 June. Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2\(2015\)3&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2(2015)3&docLanguage=En).
- Parola F, Caschili S, Medda FR and Ferrari C (2014). Measuring the scope of inter-firm agreements in the container shipping industry: An empirical assessment. *International Journal of Shipping and Transport Logistics*, 6(5): 466–487.
- Sagers CL (2006). The demise of regulation in ocean shipping: A study in the evolution of competition policy and the predictive power of microeconomics. *Vanderbilt Journal of Transnational Law*, 39: 779–818.
- Shashikumar N (1996). Competition and models of market structure in liner shipping. *Transport Reviews*, 15(1): 3–26.
- ShippingWatch* (2014a). P3 alliance needs approval by more countries. 31 March.
- ShippingWatch* (2014b). Drewry: Alliances a response to a fragile market. 15 September.
- ShippingWatch* (2014c). China rejects P3 alliance. 17 June.
- Sjostrom W (2009). Competition and cooperation in liner shipping. Centre for Policy Studies Working Paper No. 2009–02. University College Cork.
- Szepesi S (2004). Comparing EU free trade agreements: Competition policy and state aid. In Brief Series No. 6E. European Centre for Development Policy Management (ECDPM), Maastricht, July.
- UNCTAD (1974). *Convention on a Code of Conduct for Liner Conferences*. Available at: [http://unctad.org/en/PublicationsLibrary/tdcode13add.1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/tdcode13add.1_en.pdf).
- UNCTAD (2010). Model Law on Competition: Substantive Possible Elements for a Competition Law, Commentaries and Alternative Approaches in Existing Legislation. Document TD/RBP/CONF.7/8. New York and Geneva. Available at: [http://unctad.org/es/Docs/tdrbpconf7d8\\_en.pdf](http://unctad.org/es/Docs/tdrbpconf7d8_en.pdf).
- UNCTAD (2013). *Review of Maritime Transport 2013*. United Nations publication. Sales No. E.13.II.D.9. New York and Geneva.
- UNCTAD (2015). *Review of Maritime Transport 2015*. United Nations publication. Sales No. E.15.II.D.6. New York and Geneva.
- WTO (1996). Negotiating group on basic telecommunications: Reference paper. World Trade Organization, Geneva, 24 April. Available at: [http://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/tel23\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm).
- WTO (2003). Maritime transport. Press Brief. World Trade Organization, Geneva, 20 January. Available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/min96\\_e/maritime.htm](https://www.wto.org/english/thewto_e/minist_e/min96_e/maritime.htm).
- WTO (2004). Doha Work Programme: Decision adopted by the General Council. Document WT/L/579. World Trade Organization, Geneva, 2 August. Available at: [https://www.wto.org/english/tratop\\_e/trips\\_e/ta\\_docs\\_e/2\\_wtl579\\_e.pdf](https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/2_wtl579_e.pdf).
- WTO (2005). Chairman’s report to the Trade Negotiations Committee. Document TN/S/23. World Trade Organization, Geneva, 28 November. Available at: [https://www.wto.org/english/tratop\\_e/serv\\_e/mouvement\\_persons\\_e/mouvement\\_persons\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm).
- WTO (2010). Maritime Transport Services: Background note by the Secretariat. Document S/C/W/315. World Trade Organization, Geneva, 7 June. Available at: <http://www.oecd.org/tad/services-trade/46334964.pdf>.
- WTO (2011). Negotiations on Trade in Services: Report by the Chairman to the Trade Negotiations Committee. Document TN/S/36. World Trade Organization, Geneva, 21 April. Available at: [https://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_rules\\_negs\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gats_rules_negs_e.htm).
- WTO (2012). Regulatory issues in sectors and modes of supply: Note by the Secretariat. Document S/WPDR/W/48. World Trade Organization, Geneva, 13 June. Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-Html.aspx?Id=32079&BoxNumber=3&DocumentPartNumber=1&Language=E&Window=L&PreviewContext=DP&FullTextSearch=%20-%20KV\\_GENERATED\\_FILE\\_00008c.htm](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-Html.aspx?Id=32079&BoxNumber=3&DocumentPartNumber=1&Language=E&Window=L&PreviewContext=DP&FullTextSearch=%20-%20KV_GENERATED_FILE_00008c.htm).

## UNCTAD DISCUSSION PAPERS

<i>No.</i>	<i>Date</i>	<i>Author(s)</i>	<i>Title</i>
223	October 2015	Carlos M. Correa	Intellectual property: How much room is left for industrial policy?
222	July 2015	Ulrich Hoffmann	Can green growth really work and what are the true (socio-) economics of climate change?
221	May 2015	Eric Helleiner	International policy coordination for development: The forgotten legacy of Bretton Woods
220	May 2015	Martin Falk and Eva Hagsten	E-commerce trends and impacts across Europe
219	March 2015	Piergiuseppe Fortunato, Carlos Razo and Kasper Vrolijk	Operationalizing the product space: A road map to export diversification
218	December 2014	Daniel Poon	China's development trajectory: A strategic opening for industrial policy in the South
217	November 2014	Yılmaz Akyüz	Internationalization of finance and changing vulnerabilities in emerging and developing economies
216	April 2014	Andrew Cornford	Macroprudential regulation: Potential implications for rules for cross-border banking
215	March 2014	Stephany Griffith-Jones	A BRICS development bank: A dream coming true?
214	December 2013	Jörg Mayer	Towards more balanced growth strategies in developing countries: Issues related to market size, trade balances and purchasing power
213	November 2013	Shigehisa Kasahara	The Asian developmental State and the Flying Geese paradigm
212	November 2013	Vladimir Filimonov, David Bicchetti, Nicolas Maystre and Didier Sornette	Quantification of the high level of endogeneity and of structural regime shifts in commodity markets
211	October 2013	André Nassif, Carmem Feijó and Eliane Araújo	Structural change and economic development: Is Brazil catching up or falling behind?
210	December 2012	Giovanni Andrea Cornia and Bruno Martorano	Development policies and income inequality in selected developing regions, 1980–2010
209	November 2012	Alessandro Missale and Emanuele Bacchiocchi	Multilateral indexed loans and debt sustainability
208	October 2012	David Bicchetti and Nicolas Maystre	The synchronized and long-lasting structural change on commodity markets: Evidence from high frequency data
207	July 2012	Amelia U. Santos-Paulino	Trade, income distribution and poverty in developing countries: A survey
206	December 2011	André Nassif, Carmem Feijó and Eliane Araújo	The long-term “optimal” real exchange rate and the currency overvaluation trend in open emerging economies: The case of Brazil
205	December 2011	Ulrich Hoffmann	Some reflections on climate change, green growth illusions and development space
204	October 2011	Peter Bofinger	The scope for foreign exchange market interventions
203	September 2011	Javier Lindenboim, Damián Kennedy and Juan M. Graña	Share of labour compensation and aggregate demand discussions towards a growth strategy
202	June 2011	Pilar Fajarnes	An overview of major sources of data and analyses relating to physical fundamentals in international commodity markets



<i>No.</i>	<i>Date</i>	<i>Author(s)</i>	<i>Title</i>
201	February 2011	Ulrich Hoffmann	Assuring food security in developing countries under the challenges of climate change: Key trade and development issues of a fundamental transformation of agriculture
200	September 2010	Jörg Mayer	Global rebalancing: Effects on trade flows and employment
199	June 2010	Ugo Panizza, Federico Sturzenegger and Jeromin Zettelmeyer	International government debt
198	April 2010	Lee C. Buchheit and G. Mitu Gulati	Responsible sovereign lending and borrowing
197	March 2010	Christopher L. Gilbert	Speculative influences on commodity futures prices 2006–2008
196	November 2009	Michael Herrmann	Food security and agricultural development in times of high commodity prices
195	October 2009	Jörg Mayer	The growing interdependence between financial and commodity markets
194	June 2009	Andrew Cornford	Statistics for international trade in banking services: Requirements, availability and prospects
193	January 2009	Sebastian Dullien	Central banking, financial institutions and credit creation in developing countries
192	November 2008	Enrique Cosío-Pascal	The emerging of a multilateral forum for debt restructuring: The Paris Club
191	October 2008	Jörg Mayer	Policy space: What, for what, and where?
190	October 2008	Martin Knoll	Budget support: A reformed approach or old wine in new skins?
189	September 2008	Martina Metzger	Regional cooperation and integration in sub-Saharan Africa
188	March 2008	Ugo Panizza	Domestic and external public debt in developing countries
187	February 2008	Michael Geiger	Instruments of monetary policy in China and their effectiveness: 1994–2006
186	January 2008	Marwan Elkhoury	Credit rating agencies and their potential impact on developing countries
185	July 2007	Robert Howse	The concept of odious debt in public international law
184	May 2007	André Nassif	National innovation system and macroeconomic policies: Brazil and India in comparative perspective
183	April 2007	Irfan ul Haque	Rethinking industrial policy
182	October 2006	Robert Rowthorn	The renaissance of China and India: implications for the advanced economies
181	October 2005	Michael Sakbani	A re-examination of the architecture of the international economic system in a global setting: Issues and proposals
180	October 2005	Jörg Mayer and Pilar Fajarnes	Tripling Africa's Primary Exports: What? How? Where?
179	April 2005	S.M. Shafaeddin	Trade liberalization and economic reform in developing countries: structural change or de-industrialization?
178	April 2005	Andrew Cornford	Basel II: The revised framework of June 2004
177	April 2005	Benu Schneider	Do global standards and codes prevent financial crises? Some proposals on modifying the standards-based approach
176	December 2004	Jörg Mayer	Not totally naked: Textiles and clothing trade in a quota free environment
175	August 2004	S.M. Shafaeddin	Who is the master? Who is the servant? Market or Government?

<i>No.</i>	<i>Date</i>	<i>Author(s)</i>	<i>Title</i>
174	August 2004	Jörg Mayer	Industrialization in developing countries: Some evidence from a new economic geography perspective
173	June 2004	Irfan ul Haque	Globalization, neoliberalism and labour
172	June 2004	Andrew J. Cornford	The WTO negotiations on financial services: Current issues and future directions
171	May 2004	Andrew J. Cornford	Variable geometry for the WTO: Concepts and precedents
170	May 2004	Robert Rowthorn and Ken Coutts	De-industrialization and the balance of payments in advanced economies
169	April 2004	Shigehisa Kasahara	The flying geese paradigm: A critical study of its application to East Asian regional development
168	February 2004	Alberto Gabriele	Policy alternatives in reforming power utilities in developing countries: A critical survey
167	January 2004	Richard Kozul-Wright and Paul Rayment	Globalization reloaded: An UNCTAD Perspective
166	February 2003	Jörg Mayer	The fallacy of composition: A review of the literature
165	November 2002	Yuefen Li	China's accession to WTO: Exaggerated fears?
164	November 2002	Lucas Assuncao and ZhongXiang Zhang	Domestic climate change policies and the WTO
163	November 2002	A.S. Bhalla and S. Qiu	China's WTO accession. Its impact on Chinese employment
162	July 2002	Peter Nolan and Jin Zhang	The challenge of globalization for large Chinese firms
161	June 2002	Zheng Zhihai and Zhao Yumin	China's terms of trade in manufactures, 1993–2000
160	June 2002	S.M. Shafaeddin	The impact of China's accession to WTO on exports of developing countries
159	May 2002	Jörg Mayer, Arunas Butkevicius and Ali Kadri	Dynamic products in world exports
158	April 2002	Yılmaz Akyüz and Korkut Boratav	The making of the Turkish financial crisis
157	September 2001	Heiner Flassbeck	The exchange rate: Economic policy tool or market price?
156	August 2001	Andrew J. Cornford	The Basel Committee's proposals for revised capital standards: Mark 2 and the state of play
155	August 2001	Alberto Gabriele	Science and technology policies, industrial reform and technical progress in China: Can socialist property rights be compatible with technological catching up?
154	June 2001	Jörg Mayer	Technology diffusion, human capital and economic growth in developing countries
153	December 2000	Mehdi Shafaeddin	Free trade or fair trade? Fallacies surrounding the theories of trade liberalization and protection and contradictions in international trade rules
152	December 2000	Dilip K. Das	Asian crisis: Distilling critical lessons
151	October 2000	Bernard Shull	Financial modernization legislation in the United States – Background and implications
150	August 2000	Jörg Mayer	Globalization, technology transfer and skill accumulation in low-income countries