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George N. Yannopoulos

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I. Return to a Market-Based Organization

Interest within the Organization for Economic Cooperation and Development (OECD)[1] in the liberalization of trade in services has grown considerably since the completion of the Tokyo Round of the General Agreement on Tariffs and Trade (GATT) in 1973-79.[2] As a result of the GATT rounds of negotiations, barriers to trade in merchandise have been considerably lowered. Nevertheless, further benefits in stimulating world trade through competition can be derived either by extending the process of liberalization to world trade in services or eliminating nontariff barriers, or through a combination of both approaches.

Attention should now focus on the international barriers currently restricting trade in services. World trade in services has expanded at rates comparable to the growth of world trade in merchandise. More significantly, the ability to export services is closely correlated to the economic growth of many nations. Among lower-middle income countries in particular, high growth rates are associated with a significantly higher proportion of services in total exports.[3] Undoubtedly, a free and open regime for trade in services is imperative to encourage worldwide economic growth and stability.

While the current GATT framework cannot be used to establish a more open regime in international services trade, momentum is gathering to correct this problem. In December 1985, the OECD proposed a set of principles for establishing a framework to handle

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* Chairman, Graduate School of European and International Studies, University of Reading, England.

[1] OECD consists of 24 nations, including Canada, United States, Australia, New Zealand, Japan, and the Western European nations. The Organization serves as a forum for the exchange of ideas and the coordination of the Member States' economic policies. Funding is provided by membership contributions.

[2] The Tokyo Round was the seventh round of the GATT negotiating talks.

[3] Riddle, *The Role of the Service Sector in Economic Development: Similarities and Differences by Development Category*, in THE EMERGING SERVICE ECONOMY 83, 94-95 (O. Giarini ed. 1987).

trade in services problems.[4] Subsequent to the outlining of these proposals, reform of the international trading regime in services has dominated international trade policy discussions.[5]

One development with important implications for the future of an international regime of trade in services is the attempts by several *regional* trading blocs to extend the process of economic integration to cover trade in services. The most significant of these efforts are the European Economic Community (EEC) initiatives to establish a common transport policy, harmonize banking and insurance rules, and introduce a common tourism policy. These regional liberalization attempts concerning trade in services gain significance when viewed against the existing institutional vacuum in the international regime, and the analysis of their international implications acquires more importance. This Perspective will examine one such regional effort, the EEC's attempt to formulate a common policy for maritime transport.

A. *Maritime Transport Services*

The shifts in economic policy positions, best symbolized by GATT's explosive effect on trade in merchandise and by its potential effect on trade in services, have exerted an influence on almost all sectors of world trade in services. International trade in maritime transport services is no exception.

In some respects, maritime transport has been at the forefront of discussions for liberalization of trade in services. In the United States, the adoption of the Shipping Act of 1984[6] created new rules for governing the conduct of international maritime practices. In 1986 the European Community, after a long period of benign neglect, adopted a set of regulations that underlined the European consensus in favor of a multilateral, market-based organization of world shipping.[7] Finally, in a related development, France, Norway, and

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[4] OECD, THE ELEMENTS OF A CONCEPTUAL FRAMEWORK FOR TRADE IN SERVICES (TC/WP85/9, 1985) (document available from the author or through the OECD Library).

[5] The focus on this issue exploded into a call for a new GATT round following the discussions in Punta del Este, Uruguay in September 1986. Policy reform of international trade in services has been further strengthened by the deregulation movement initiated in the late 1970s, which influenced economic policy in several OECD countries. For a discussion of the deregulation movement in the United States, see Backman, *The Problem of Regulation*, in REGULATION AND DEREGULATION 1 (J. Backman ed. 1981).

[6] Pub. L. No. 98-237, 98 Stat. 67 (codified in scattered sections of 46 U.S.C.). *See* L. WHITE, INTERNATIONAL TRADE IN OCEAN SHIPPING SERVICES 39 (1988); Friedman & Devierno, *The Shipping Act of 1984: The Shift from Government Regulation to Shipper Regulation*, 15 J. OF MAR. L. & COM. 311 (1984).

[7] On December 22, 1986, the Council of the European Community adopted the following five regulations concerning maritime transport services: (1) Council Regulation (EEC) No. 4055/86 applied the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries; (2) Council Regulation (EEC) No. 4056/86 laid down detailed rules for the application of Articles 85 and 86 of the Treaty of Rome establishing the European Economic Community to mari-

the United Kingdom recently allowed the formation of new international registries linked to their respective national flags, but which act in practice as "captive open registries."[8]

The recent liberalization trends in maritime transport may not surprise some observers, who would note that historically this international service sector has enjoyed a comparatively more liberal regime.[9] Nevertheless, while liberal trade attitudes may have existed in some segments of the maritime transport sector, they have not been prevalent throughout this market as a whole. For example, numerous protectionist measures have been imposed on maritime transport services because of the important defense role and strategic value of merchant fleets.[10] Ironically, most of these defense-induced protectionist measures have crippled the competitiveness of many national fleets, causing them to shrink and undermining the original defense objectives. A proliferation of government-induced restraints to achieve defense and industrial policy objectives has, in fact, eroded the open nature of the earlier international shipping regime. Cargo sharing, cargo preferences, carbotage reservations,[11] and bilateral agreements have become widespread practices.[12] In addition, the emergence of state shipping companies has eroded the open character of the international maritime transport market.

The traditional liberal regime in maritime transport came under further attack during the rise of the movement for a New International Economic Order. During the 1970s and '80s, a number of developing countries used the United Nations Conference on Trade and Development (UNCTAD) to push for redistributive measures aimed at strengthening their own merchant fleets through internationally sanctioned cargo reservation rules. The demands of the developing countries led the UNCTAD to adopt in 1974 the Code of

time transport; (3) Council Regulation (EEC) No. 4057/86 addressed unfair pricing practices in maritime transport; (4) Council Regulation (EEC) No. 4058/86 provided for coordinated actions to safeguard free access to cargoes in ocean trades; and (5) Council Regulation (EEC) No. 4059/86 granted financial support to transport infrastructure projects. *See* 29 O.J. EUR. COMM. (No. L 378) 1 (1986).

8 The respective registries are for France, Kerguelen Island; Norway, the New International Shipping Registry (NIS); and the United Kingdom, Isle of Man. Instead of controlling the process of flagging-out, governments are now ready to progressively equalize the conditions between close and open registry systems. *See* Kappel, *New Horizons in the Internationalisation Process of Shipping*, in SHIPPING STATISTICS 4-5 (Institute for Shipping Economics and Logistics (ISL), University of Bremen, March 1987).

9 Richardson, *A Sub-sectoral Approach to Services' Trade Theory*, in THE EMERGING SERVICE ECONOMY 59, 75 (O. Giarini ed. 1987).

10 *See generally* Stryker, *Civil Shipping Support for NATO*, 34 N.A.T.O. REV. 29 (1986).

11 Carbotage laws are designed to reserve to a nation's own ships the coastwise trade between a nation's ports. E. FRANKEL, REGULATION AND POLICIES OF AMERICAN SHIPPING 59 (1982).

12 In the United States alone, the costs from such subsidies are estimated to involve about $3 billion a year in terms of transfer from taxpayers and shippers to the shipping industry. L. WHITE, *supra* note 6, at 83-84.

Conduct for Liner Conferences.[13] Through the Code, developing countries used quasi-regulatory and protectionist measures to curtail the power of the developed nations and protect their own flag lines.[14] The success of UNCTAD in regulating competition in the liner conferences segment of the maritime transport industry prompted subsequent moves for intervention in the relatively unregulated open registry system to reduce the advantages of the flags of convenience. This effort, however, ended after the New International Economic Order movement lost its momentum in the 1980s. The demise of the New Economic Order movement marked the end of a relatively short phase of regulatory fervor in international maritime transport and signaled the ascension in this area for an era of worldwide liberalization.

This latest shift from government-controlled to market-based shipping policies is more understandable when considered in the context of recent changes in the international economic environment. Three factors demonstrate this. First, slow worldwide economic growth has intensified competition in world markets and made companies more concerned about cost effectiveness. Protectionist measures in the services sectors have "spillover" effects on other industries. The costs of interventionist measures in the services markets are borne not only by the directly affected sector, but also by outside industries that use such services. For example, a competitive manufacturing industry requires a flexible and open international shipping system. Such realizations have made governments more aware of the consequences of departing from market-based policies in international shipping.[15]

Second, the shipping industry, especially in the traditional maritime countries, faces extensive market adjustment problems as new competitors enter the industry. The increase in competition is the result of a slump in world demand. During this depressed period, vessel prices have fallen and lowered the financial barriers for entering the market. Reducing government-imposed costs on the shipping industry would facilitate the necessary market adjustments.

Third, the rate of technological innovation in the shipping industry has also increased. Containerization, new opportunities for inter-modal coordination, and increased use of telecommunications and computers in shipping operations offer new sources of compara-

[13] For the full text of the United Nations convention on a Code of Conduct for Liner Conferences, see 13 I.L.M. 910-48 (1974). *See generally* Juda, *The UNCTAD Liner Code: A Preliminary Examination of the Implementation of the Code of Conduct for Liner Conferences*, 16 J. MAR. L. & COM. 181 (1985).

[14] L. WHITE, *supra* note 6, at 41.

[15] Schott & Mazza, *Trade in Services and Developing Countries*, 20 J. WORLD TRADE L. 253, 261 (1986). For example, protectionist policies increase insurance costs. The greater cost "discourage[s] potential users from covering risks." *Id.*

tive advantage in international maritime transport. To spearhead these technological advances for the purpose of sustaining comparative advantages requires a more competitive environment, not the stifling framework of government restraints.

II. A European Framework for International Shipping

Of the recent policy developments, the emergence of a common maritime transport policy in the EEC[16] undoubtedly will be an influential factor in the design of the future international maritime order. The EEC merchant fleets account for about one-fifth of world tonnage. (See Table 1.) If fleets listed in open registries that are owned by EEC nationals are added in, the share of world shipping controlled by Community nationals or Community-based companies increases another seven percent.

Table 1: European Community Merchant Fleets (million tons gross)

	1975	1983	1986
EEC (12 Countries)	103.2	104.4	77.3
Percentage of world total	(30.2)	(24.7)	(19.1)
Belgium	1.4	2.3	2.4
Denmark	4.5	5.1	4.7
France	10.7	9.9	5.9
Germany	8.5	6.9	5.6
Greece	22.5	37.5	28.4
Italy	10.1	10.0	7.9
The Netherlands	5.7	4.9	4.3
Portugal	1.2	1.2	1.1
Spain	5.4	7.5	5.4
United Kingdom	33.2	19.1	11.6

Source: SHIPPING STATISTICS (Institute for Shipping Economics and Logistics (ISL), University of Bremen).

Furthermore, the EEC's new maritime transport policy will affect all shipping concerns that transport the Community's seaborne trade irrespective of the flag the ships fly. The new policy does not limit itself to internal harmonization, but also introduces global regulations for extra-Community trade in maritime transport services.[17] Considering that the European Community is the world's largest trading area, the impact of the EEC common maritime transport policy will extend throughout the international market.[18]

[16] 29 O.J. EUR. COMM. (No. L 378) 1 (1986).
[17] *Id.*
[18] The EEC accounts for 21% of world imports and 20% of world exports by value

One innovative feature contained in the new EEC maritime policy is the instruments it contains for responding to ad hoc maritime initiatives made by nonmember nations. EEC policies are not the only ones that influence developments in European shipping.[19] About fifty percent of the Community's net earnings from shipping are derived by cross-trading outside the Community. A strong interdependence exists between the Community and the other maritime nations, which should require significant policy coordination. Unfortunately, the existing institutional framework does not provide an appropriate basis for such coordination. Thus, it is important that the EEC now possesses appropriate policy instruments for responding to policy changes by other maritime nations.

Under these new policy instruments, the EEC can initiate coordinated action if free access to cargo is restricted by third countries.[20] Furthermore, when third country ship owners in liner shipping engage in unfair pricing practices that injure Community ship owners, redressive duties may be introduced by the EEC.[21]

Although the EEC's new maritime policy is relatively extensive, it is not comprehensive. The policy envisions the eventual phasing out of all existing bilateral cargo-sharing agreements involving EEC countries and the prohibition of new agreements. Restrictions on freedom to provide maritime transport services between EEC countries and nonmember countries also will be phased out. Finally, detailed rules in the policy apply Articles 85 and 86 of the Treaty of Rome to the maritime transport sector.[22] This application will enable liner conference agreements to proceed, but simultaneously give shippers the right to complain about anticompetitive practices.

One area where the new policy falls short is in its failure to liberalize intra-EEC carbotage trade regulations.[23] Some Member States

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compared to 16% and 15%, respectively, for the United States; and 9% and 10% for Japan. More importantly, about 95% of EEC trade with nonmember countries is carried by sea. The corresponding figure for intra-Community trade is 30%. Out of this seaborne trade, approximately 60% is carried in ships flying flags of nonmember states, although a portion of this involves open registry shipping. The Commission Directorate General for Transport estimates that ships under flags of convenience owned by Community nationals account for approximately 23% of the cargo generated by extra-area merchandise trade. This leaves to third country shipping firms a little less than 40% of the Community's tonnage trade with nonmembers.

[19] *See generally* 29 O.J. EUR. COMM. (No. L 378) 1 (1986).

[20] *Id.* at 21.

[21] *Id.* at 14. Analysts of merchandise trade policy have argued that a policy of appropriate unilateral trade retaliation is a more efficient way to deal with unfair trade practices. Goldstein & Krasner, *Unfair Trade Practices: The Case for a Differential Response*, 74 AM. ECON. REV. 282, 284 (1984). This policy, entitled "Tit for Tat," is a "strategy in which the player cooperates on the first move and then does whatever the other player did on the preceding move." *Id.* Such a policy when exercised with care may in practice elicit cooperation and freer trade rather than lead to trade wars.

[22] 29 O.J. EUR. COMM. (No. L 378) 4 (1986).

[23] The original EEC proposals sought to remove restrictions on intra-EEC carbotage

have used carbotage trade restrictions for many years and refused to endorse their removal in the Community.[24] These regulations deny EEC ship owners an equal opportunity to compete for trade in each other's markets. The failure to remove these regulations was unfortunate because it may encourage other countries to implement increasingly protectionist and restrictive trading regimes. If the EEC had removed the carbotage restrictions, its new maritime policy would have gone even further in reshaping the future international maritime transport regime.

III. Liberalization Strategies

Four policy options could be pursued to steer world shipping towards even more market freedom. They are described here as the minimalist, incrementalist, public choice, and maximalist approaches.

Under the minimalist proposal, the status quo governing developing countries' shipping are stabilized in an effort to stop the further spread of protectionist restraints. One goal the minimalists advocate is to stop the spread from liner shipping of "cargo sharing" and other forms of discrimination to other segments of the maritime transport industry. The minimalists recommend that the EEC should remove restraints such as carbotage reservations, cargo preferences, and bilateral agreements. Such a move would extend and solidify each country's freedom to supply shipping services in its mutual traffic and strengthen the bargaining ability of the traditional maritime nations to press for a more liberal world maritime order.

The advocates of the incrementalist option endorse a "step-by-step" approach to reforming protectionist maritime measures. The next opportunity for reformers of this approach will be the 1989 review of the United Nations Code of Conduct on Liner Conferences. This upcoming revision will provide an opportunity for the traditional maritime nations to advocate for a change from the current 40:40:20 cargo reservation formula to a 33:33:33 ratio.[25]

The public choice option towards progressive liberalization is based on the distinction between property rights and the use of property rights. For example, advocates of public choice argue that the current UN Code of Conduct for Liner Conferences sacrifices

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trade. Nevertheless, the proposals finally endorsed by the Council of Ministers failed to agree on the issue.

24 A new policy on intra-EEC carbotage trade was thwarted by the strong political influence of certain highly protected shipping groups engaged in coastal trade inside the various Member States.

25 Under the current formula, 40% of all bilateral trade is reserved for one trading partner, 40% is reserved for the fleet of the other partner, and 20% is reserved for the flag fleets of third countries. L. WHITE, *supra* note 6, at 33. The United States has already proposed the alternative formula in its bilateral negotiations with the People's Republic of China and the Union of Soviet Socialist Republics.

efficiency in supplying shipping services in favor of short-term intercountry redistribution of income from shipping. This conflict between allocative efficiency and income redistribution, however, could be resolved if the right to share cargo was offered through auctioning the cargo-sharing licenses under competitive conditions open to all shipping companies. Under this arrangement, governments of the developing countries could obtain a share in shipping income without adversely affecting the efficiency of the world shipping industry.[26]

Finally, the maximalist approach would extend the competence of GATT to trade in services and apply the multilateral negotiations technique to the maritime services trade. GATT has succeeded in considerably liberalizing world trade in manufactured products during the past forty years. The first objective for effective GATT involvement in maritime services would be to establish an equivalent to the Most Favored Nation principle already used in merchandise trade. The second step would be to prepare a framework agreement under the GATT to ensure free market access of maritime transport services. Further problems involving transparency, regulatory policies and safeguards, and balancing the rights and obligations of the participants require solutions before an enforceable multilateral agreement would be achievable. Should these difficulties prove insurmountable in the GATT fora, the maximalist scenario has a fallback position. Joint action within the OECD area could create a broader regional free market in maritime transport services among all countries willing to adopt a liberal maritime order.

IV. Conclusion

The effectiveness of liberalization of trade in services on a sectoral basis may be lost if other economic sectors are heavily protected from world competition. Exposing one sector to worldwide competition without simultaneously removing lateral burdens imposed on that sector by protectionist measures in other sectors may undermine the competitive survival of the liberalized sector. Analysis of the sectoral repercussions of the European Community's Common Agricultural Policy showed that in the absence of agricultural support by the EEC Community, exports of services would have been seventeen percent higher and imports of services would have been lower by six percent.[27] The current Uruguay Round of GATT,

[26] The competitive auctioning technique also could be used to allocate among European shipping companies the 50% share that will become available to Community fleets when the present bilateral agreements with Council for Mutual Economic Assistance (COMECON) countries are replaced by a Community-wide framework. (The COMECON countries are Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, and the Union of Soviet Socialist Republics.)

[27] A. STOECKEL, INTERSECTORAL EFFECTS OF THE CAP: GROWTH, TRADE AND UNEM-

which brings together both trade in services and trade in agriculture products, offers an interesting prospect for a comprehensive liberalization of world trade in general.

PLOYMENT 40, table 14 (Bureau of Agricultural Economics, Australian Government Publishing Service, Occasional Paper No. 95, 1985).