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JOURNAL OF THE INSTITUTE OF SEATRANSPORT

尺碼噸 (Volumetric Tonnage)

**The Greater Bay Area Initiative -
Are You Ready For It?**

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Institute of Seatransport 34th Anniversary Dinner Party USTH's Speech

Raymond So

Good Evening. Thank you for inviting me to join the anniversary dinner tonight. I am very honoured to be here to celebrate the 34th Anniversary of the Institute of Seatransport with you all.

2. As an academic organisation of the maritime industry in Hong Kong, the Institute of Seatransport has been devoted in uniting professionals within the seatransport community, fostering the knowledge exchange and recognising the contributions of the professionals over the past three decades. Through regular seminars, functions and conferences, members, including shipowners, marine insurers, ship brokers, maritime lawyers, ship repairers, ship masters and etc., become well-equipped with extensive maritime knowledge in their own stream. I take this opportunity to congratulate the Institute of Seatransport on its 34th Anniversary and wish it continued success in the years to come.

3. With 150 years of maritime history, a strategic location at the heart of Asia and a vibrant maritime cluster, Hong Kong has long been a preferred destination for global shipping businesses. We have one of the busiest container terminals in the world which handle over 20 million TEUs every year. Our container terminals provide about 320 container liner servicers per week connecting to around 470 destinations worldwide. In particular, Hong Kong Port maintains marine cargo movements with 79 countries along the Belt and Road Corridor. These have all enabled us to be an important regional logistics and maritime hub.

4. Looking ahead, Hong Kong's importance as the facilitator and promotor under the Guangdong-Hong Kong-Macao Greater Bay Area and Belt and Road Initiative and the development of our high value-added maritime services are set to gather pace. In this regard, the Government will undertake various initiatives, including providing tax

incentives and facilitating measures to maritime services like ship leasing and marine insurance to foster the development. We will continue to offer multitudinous high-quality services and serve as a springboard for Mainland enterprises to go global and for overseas enterprises to enter the vast Mainland market.

5. It is undoubted that manpower is the foundation of the development of the maritime and port industry. To attract the young generation to join the industry and to build a vibrant, diversified and competitive pool of professionals and technical personnel to support our future maritime development, the Government has set up a $100 million Maritime and Aviation Fund (MATF) in 2014. More than 2200 students and 4100 in-service practitioners have been benefited since the incorporation of MATF. To continue its mission of nurturing maritime talent, the Government will inject $200 million into MATF to continue its operation.

6. It is also important for the talent to learn from the predecessors who are knowledgeable and experienced like everyone of you. Professional knowledge and practical experience from maritime professionals are highly valuable and could not be obtained elsewhere. This is where the Institute kicks in, the Institute provides a great platform to enable the teaching-learning process in which every member of the maritime industry will benefit after all. Together, we can nurture a competitive pool of talent and raise the professionalism of personnel for the long-term development of the maritime and port industry.

7. Today, Hong Kong stands as a world-renowned international maritime centre, but all these achievements could not have been made possible without the dedication and contribution from you all. Looking forward, the Government will strengthen our efforts in supporting the industry development. I am confident that we can overcome the challenges, seize the opportunities and lead Hong Kong's maritime and port industry to a more vibrant future together. Once again, may I wish the Institute every success in the years to come and I wish you all an enjoyable evening. Thank you.

(Raymond So: Under Secretary for Transport and Housing)

尺碼噸 (Volumetric Tonnage)

林傑

『排水量』是與重量有關係的。船舶另一種『噸位』是與重量無關係的，便是『尺碼噸』或體積噸，尺碼噸主要分為『總噸』和『淨噸』。

『總噸』(Gross Tonnage) 是指一艘船舶的總水密空間或體積，國際上以一公式將此體積換算為總噸。總噸是沒有單位的，只是一個數目字。一般來說，大約 2.83 立方米相等於一船舶噸。

『淨噸』(Net Tonnage or Nett Tonnage) 是指船舶的總噸減去需要操作船舶的空間，即船東可以用來賺取運費的水密空間，國際上以一公式將此水密空間換算為淨噸。淨噸也是沒有單位的，只是一個數目字。

註冊長度 24 米及以上的船舶

註冊長度 24 米及以上的船舶和遠洋航行之噸位須根據《國際船舶丈量噸位公約》計算。

總噸 Gross Tonnage

總噸 (GROSS TONNAGE)[GT] 是量度船舶整體全部可封蔽的體積 (或容積)。它由下述公式決定的：

$GT = K_1 V$

註： K_1 是 GT 系數 $= 0.2 + 0.02 \log_{10} V$; V 是船舶全部封蔽空間的立方米 (m^3) 體積

淨噸 Net Tonnage

淨噸 (NETT TONNAGE)[NT] 是船舶用以盈利的容積。它由下述公式決定的：

$NT = K_2 V_c$ 錯誤！內嵌物件無效。$^2 + K_3$ 錯誤！內嵌物件無效。

註： V_c = 全部貨艙立方米體積

$K_2 = 0.2 + 0.02 \log_{10} V_c$

K_3 = 1.25 錯誤！內嵌物件無效。

D = 船舯部型深，以米為單位

d = 船舯部型吃水，以米為單位

N_1 = 艙房不多於 8 張床的乘客數量

N_2 = 其他乘客的數量

$N_1 + N_2$ = 船舶乘客證書所顯示的允許裝載的全部乘客量；當 $N_1 + N_2$ 少於 13，N_1 和 N_2 必要當作零

注意： 錯誤！內嵌物件無效。^{2}不能大過1。

K_2 V_c 錯誤！內嵌物件無效。

^{2}不能少過總噸的0.25。

淨噸不能少過總噸0.3。

例子

一貨船設計型深9米，吃水5米，全船可封蔽空間25,000立方米，包括貨艙空間20,000立方米。求總噸和淨噸。

K_1 = 0.2 + 0.02 $\log_{10}$ V

= 0.2 + 0.02 x $\log_{10}$ 25000

= 0.2 + 0.02 x 4.39794

= 0.2 + 0.087959 = 0.287959

總噸 GT = K_1V = 0.287959 x 25000 = 7198.975, 稱為 7199

淨噸 NT = K_2 V_c 錯誤！內嵌物件無效。^{2} + K_3 錯誤！內嵌物件無效。

註： 這貨船不准載客。

K_2 = 0.2 + 0.02 $\log_{10}$ V_c

= 0.2 +0.02 x $\log_{10}$ 20000

= 0.2 + 0.02 x 4.30103

= 0.2 + 0.086021 = 0.286021

NT = 0.286021 x 20000 x 錯誤！內嵌物件無效。

= 5720.42 x 錯誤！內嵌物件無效。

= 5720.42 x $(0.74074)^2$

= 5720.42 x 0.548696 = 3138.8, 稱為 3139

答：

總噸7199，和淨噸3139。

(林傑：已退休

Master Mariner, FIS, MH.)

The Greater Bay Area Initiative – Are You Ready For It ?

Rosita Lau

The Greater Bay Area Initiative was officially announced in March 2017 by China's Premier Li Keqiang in his Annual Report. The author has been speaking in seminars and briefings on what the Master Plan of the Initiative is expected to contain and how the Initiative would benefit Hong Kong, the Greater Bay Area and China as a whole. At the time of writing this article, the long awaited Master Plan of the Initiative, which was originally anticipated to be launched in the first half of 2018, has not been announced yet. Following the Chief Executive Ms Carrie Cheng's latest trip to Beijing in December 2018 to report to President Xi on her rule of Hong Kong, it has been anticipated that the Master Plan would be launched in early 2019, when the position of the US-China trade war is more certain after the three-month cease fire period has come to an end by late March 2019. It is therefore at present not sure as to what the Master Plan would say exactly.

However, in the recent months the Central Government has adopted a chain of new policies that are generally regarded as gifts to Hong Kong and part of the Great Bay Area Plan. Firstly in May 2018, the Central Government granted Hong Kong science and technology innovation researches national science funding. This is an "exceptional treat" for scientific research in Hong Kong. In late July 2018, the State Council decided and the Ministry of Human Resources and Social Security cancelled the requirement that people from Taiwan, Hong Kong and Macau have to apply for permission if they are to be employed in the Mainland.

Furthermore, the very first meeting of the Working Group for the Greater Bay Area Initiative was held in Beijing on 15 August 2018 and the Chief Executive of Hong Kong Carrie Lam Cheng Yuet-Ngor, after attending the meeting, brought back to Hong Kong the good news that the Central Government gives Hong Kong yet another "gift" in that Hong Kong citizens who are living, studying and working in China will be issued a new residence card which enables them to have access to public services in China. On 19th August 2018, the State Council announced that the new residence card can be applied for from 1 September 2018 and each card is valid for 5 years. All these gifts are considered as part of the "plan" of the Greater Bay Area Initiative although the plan has yet to be officially launched. Instead of guessing what else will be launched, have you, in particular if you are the players of the logistics and transportation industry of Hong Kong, asked yourselves whether you are ready for the implementation of this important Initiative or not? This article examines some aspects of the Initiative which in the author's view are so significant that you, the readers, and the Hong Kong citizens should consider.

The Guangdong-Hong Kong-Macau Bay Area

The Guangdong-Hong Kong-Macau Bay Area, generally called "The Greater Bay Area", comprises the Hong Kong Special Administrative Region, the Macau Special Administrative Region and nine cities in the Guangdong Province, namely Guangzhou, Shenzhen, Zhuhai, Foshan, Zhongshan, Huizhou, Dongguan, Zhaoqing and Jiangmen.

The photo is from official Greater Bay Area website here: https://www.bayarea.gov.hk/en/home/index.html

The Greater Bay Area Initiative aims at that in thirteen (13) years' time from 2017, that is, by 2030, the Greater Bay Area is as strong as or will surpass the other greater bay areas of the world such as the New York Bay, the San Francisco Bay, and the Tokyo Bay economically and financially. Furthermore, another aim of the Initiative is that the Greater Bay Area will be developed into a technology innovation hub that can rival the Silicon Valley of the United States.

The Initiative was first mentioned in 2016 in China's 13th Five Year Plan. In March 2017, Premier Le Keqiang announced it in his Annual Government Report as a strategy that will be pursued with immediate effect. On 1st July 2017, on the 20th anniversary of the setting up of the Hong Kong Special Administrative Region, President Xi Jinping graced Hong Kong with his presence and the Framework Agreement on Deepening Guangdong-Hong Kong-Macau Co-operation in the Development of the Bay Area was signed by the four relevant parties, namely, the National Development and Reform Commission (NDRC) of the Central Government and the respective Government of Guangdong, Hong Kong and Macau in his presence. On 8th October 2017, the Initiative was given a lot of weight by the Chief Executive of Hong Kong in her maiden Policy Address. On 19th October 2017, the Initiative was mentioned in President Xi's speech in the 19th Communist Party's Congress as an initiative that the Central Government is determined to make it successful. On 10 October 2018, the Chief Executive's second Policy Address mentions the Greater Bay Area Initiatives in many parts.

In 2018, the Initiative becomes even more important with the United States threatening China from January to May 2018 to levy tariff on imports from China, and with their levying tariff on China imports since June. As a result of which, China's trade with and exports to the US, and China economy has been inevitably affected. Some way out have to be found

quickly. China stands firm in the trade war which seemingly surprised the United States who then started to criticize and attack China's another great Initiative, the One Belt One Road Initiative which involves lots of overseas countries. While the stance of the governments of the overseas countries cannot be guaranteed in the context of the Belt and Road Initiative as that involves diplomacy and international politics, enhancing China's economy by speeding up the development of the Greater Bay Area, which involves territories and local governments within China, are more easily achievable targets. In March 2018, Premier Li once again stressed in his 2018 Annual Report the full support of the Central Government of the Initiative. Later on, Vice- Premier Han Zheng was tasked with the job to lead the development of the Greater Bay Area. Han is also the person-in-charge of the affairs of Hong Kong and Macau. Deploying such a top state leader to lead and oversees the development of the Greater Bay Area is telling and self-evident on how important the Initiative is in the eyes of the Government of China. Thereafter there has been discussion on that a Master Plan for the Greater Bay Area is about to be launched and that it would have been launched had not been the US-China trade war as the war entails review of the plan. In any case, as mentioned, while we do not know the details of the Master Plan yet, it can be inferred from those development in the last few months that Hong Kong, the citizens of Hong Kong and the established status of Hong Kong as an International Financial Centre, an International Maritime Centre and as an up-coming International Trade Centre and International Dispute Resolution Centre are given great weight. Hong Kong is tasked with important duties and missions to accomplish so as to make the Initiative a success.

The Greater Bay Area Strategy provide detailed particulars on the roles to be played by Hong Kong, Macau and the nine cities of Guangdong in developing the Area. It is also part of the One Belt One Road Initiative. Like the Belt and Road Initiative which has its origin in the Tang Dynasty Silk Road on the land and the Ming Dynasty Zheng-he maritime missions to South East Asia, the Greater Bay Area Initiative does not come out all of a sudden. It has a series of predecessor. Since the re-opening of China in 1979/1980, China started the Special Economic Zones Initiative. Shenzhen became the very first special economic zone and Shenzhen is now also one of the nine cities in Guangdong in the Greater Bay Area Initiative. In addition, Zhuhai and Shekou of Guangdong, Shantou and Xiamen were all developed into special economic zones. Many Hong Kong merchants and manufacturers went up to these special economic zones in Guangdong and invested there. They set up factories, employed local people and contributed enormously to the development of all these areas into rich economic regions. Since June 2003 Mainland and Hong Kong entered into the Closer Economic Partnership Agreement (CEPA) which covers, inter alia, the cities of the Greater Bay Area as well. Then there came 2007

when the Pan Pearl River Delta Region Co-operation (Pan PRD) came into existence. This initiative covers Hong Kong and, among other provinces, Guangdong, and therefore includes all the nine Greater Bay Area cities in Guangdong as well in August 2009 we had the launching of the Zhuhai Hengqin Free Trade Zone Initiative. In 2010, Shenzhen started to run its Qianhai Free Trade Zone. Furthermore, in 2012 Guangzhou started its Nansha Experimental Initiative, an initiative which aims at making Nansha a yacht centre and a maritime centre by 2025. The Hengqin Initiative, the Qianhai Initiative and the Nansha Initiative are still alive, kicking and continuing. Guangzhou, Shenzhen, Zhuhai are repeatedly involved in these initiatives. Investors and members of the professional services industry of Hong Kong have been encouraged to invest in Hengqin, Qianhai and Nansha. So what happened to these initiatives? Why the Greater Bay Area Initiative which involves very much the same cities of the Pearl River Delta Region was launched? Is it a duplication?

The answers are not difficult to find. The Hengqin Initiative, the Qianhai and the Nansha Initiative all focus on one city or one place. Those cities are, unlike Hong Kong, not that well connected with other thriving areas or cities of the world and hence their respective potential have not been explored and developed to their limit and consequently their targets have yet to be attained. Some investors are concerned about the uncertainties of the operation of those initiatives. They are concerned that if in case disputes arise in their investment in Hengqin, Qianhai or Nansha, and if the relevant investment contracts provide expressly that the laws of Hong Kong govern the contracts and disputes that arise from the contracts be dealt with by Hong Kong Courts, whether the Chinese courts would definitely respect the contractual jurisdiction clause and adjudge the disputes in accordance with the laws of Hong Kong. The concern is not ungrounded because under China's civil law, a plaintiff who is resident in China can go to the Chinese court to commence and pursue proceedings in respect of transactions that took place within China. There are cases in which when the Chinese courts seized jurisdiction of such disputes, Chinese laws instead of the contractual governing laws, that is, Hong Kong laws, were adopted as the governing laws for deciding the disputes.

Then how is the Greater Bay Area Initiative different to all these previous initiatives? It is the first initiative that is, although involves a region, given high level national attention and status. The Framework Agreement on Deepening Guangdong-Hong Kong-Macau Cooperation in the Development of the Bay Are signed on 1st July 2017 in Hong Kong, stipulated inter alia, firstly, clear division of role and work among Hong Kong, Macau and the nine Guangdong cities in that (1) the nine Guangdong cities are to further develop their manufacturing industries, innovative business, internet and high-tech business, (2) Macau is for leisure and entertainment business and is to be a platform to do business with

Portugal and (3) Hong Kong which is already an international city and has been ranked as the world's freest economic city for twenty three consecutive years, is to (a) enhance its existing International Financial Centre status, (b) enhance its International Maritime Centre status, (c) develop into an International Trade Centre, (d) build it up as Asia Pacific's International Legal Centre and Disputes Resolution Centre, (e) develop the logistics and supply chain business, (f) enhance its status as an offshore Renminbi trading centre, (g) enhance its international asset management centre function, and (h) enhance its professional services and high-tech industry.

Furthermore, the Agreement contains expressly the instructions to the Greater Bay Area governments from the Central government. Such instructions include (1) that all the relevant governments are to assist and complement each other, (2) competition has to be in proper order, (3) the 9 + 2 places are to merge and integrate into each other's economy, culture, livelihood of the people living there (4) to remove all obstacles that block the attaining of the target of building up a world class cluster of cities that are stronger than the other existing world bay areas, (5) to act as the engine to enhance the economic development of other provinces of China, (6) to be the core hub and fort in the south and south-eastern part of China to help implement the One Belt One Road Initiative, to encourage communication with countries along the Belt and Road routes, (7) to be innovative in planning and implementing new policies to jointly promote Belt and Road infrastructure, (8) to jointly encourage the investors of the Great Bay Area to "go out" and get outside investors to "go into" China by acting as a facilitating platform, (9) to enable free flow of manpower and talents within the Area, and, (10) to speed up the building up the infrastructure to enable arriving at anywhere within the Greater Bay Area in "one hour".

The differences between the Greater Bay Area Initiative and the previous initiatives in the area are therefore obvious and eye-catching. Hong Kong has a lot of sacred missions to perform. For the first time, a strategy for a region is given the national strategy status. That President Xi witnessed the signing of the Framework Agreement, that the initiative is repeatedly included in Premier Li's Annual Report, and that Vice-Premier Han Zheng took charge of the implementation of the initiative are all telling. The Agreement laid down clearly the respective duties and roles played by Hong Kong, Macau and the nine Guangdong cities in the Belt and Road initiative as well, namely, to participate actively in it, and that Hong Kong is not only a "super-connector" as had been described previously. Destructive price cutting competition within the Area should not continue. The Agreement also expressly requires Hong Kong to merge with Mainland China's economy and culture. Most importantly, it expressly provides for close supervision by the Central Government in that (1) there will be regular meetings of the four governments every year to discuss and remove obstacles

and differences in view and to put forward suggestion to the relevant departments of the four parties for consideration, agreement and implementation, and, (2) the nine Guangdong cities, Hong Kong and Macau must jointly build up a daily mechanism in developing the Area.

Are the Hong Kong people ready for the Initiative and for discharging the duties imposed on them and for performing the roles assigned to Hong Kong under the Initiative? How much do the Hong Kong people, Hong Kong's financial industry players, Hong Kong's maritime, transportation, port and logistics industry players, Hong Kong's traders, and Hong Kong's legal professional services players know about the nine cities in Guangdong and the Initiative? How much guidance from the Government on the Initiative have been given thus far? While Hong Kong is to perform the roles given to it and to contribute, what has Hong Kong benefited from it thus far and how will Hong Kong benefit from it in future? The author would ask the readers to ask themselves all these questions and their answers would indicate how much they are ready for the Initiative.

The Hong Kong fast speed trains that link up Hong Kong with that of the Mainland has just recently commenced its operation, on 23 September 2018. The Hong Kong-Zhuhai-Macau Bridge has also been in operation since October 2018. So, the hardwares are in place. However, do all these hardwares suffice in enabling the people of Hong Kong to know what the Initiative is about and perform their role under it? In the author's view, Hong Kong is ready in many aspects for the Initiative. This is in particular in the case of Hong Kong as an International Financial Centre in the Area and to enhance its status as an offshore RMB Trading Centre. Indeed Hong Kong has been playing such role for years and has been the platform for providing financial facilities for Chinese investors who "go out" to the world under the Belt and Road Initiative. None of the nine Guangdong cities are international financial centres thus leaving Hong Kong the only place that can play the financial centre role.

However, as regards enhancing the logistics and transportation business and to take the lead in such role in the Greater Bay Area by virtue of Hong Kong's established International Maritime Centre status, by that Hong Kong's award winning airport is famous for its excellent services internationally and by that the Hong Kong airport is building its third runway; there are concerns about that unless the Hong Kong Government and the Guangdong Government together are to move quickly to give clear guidelines on that disruptive price competition that the ports and container terminals in the Guangdong cities in the Area have been subjecting the Hong Kong ports and container terminals to, there will not be much luck for the ports and container terminals of Hong Kong to thrive under the Initiative. Of the nine Guangdong cities involved at least two of them, namely, Shenzhen and Guangzhou, have container terminals and port that have been in very keen competition with the

Hong Kong port and terminals. These two ports are two of the busiest ports not only in China but also in the World by reference to the number of containers they handle each year. Hong Kong had been the world's busiest port for some years previously but the throat cutting price competition by the Mainland ports had rendered the Hong Kong port in a disadvantageous position. It is time for the Hong Kong Government and the Guangdong Government to jointly and quickly work together to comply with the instructions given to them by the Framework Agreement, namely to see to the removal of such obstacle of price competition as soon as possible. Otherwise, it is inconceivable how the role of Hong Kong as the leader in maritime, transportation and logistics in the Area is to be performed. Furthermore, whether a place is an international maritime centre or not is assessed by references to the recognition that the world's maritime industry gives it. Hong Kong has an established cluster of maritime services, the members of which have been working extremely hard all along, with not much assistances from the government and no subsidies from the government, and have earned the accolade and status of being an international maritime centre of the world as a result. It is therefore disturbing to find that there are cities in Guangdong who ignore the clear division of labour under the Framework Agreement and continue to allege that they are international maritime centres or international economic centres and that they will play such roles under the Greater Bay Area Initiative. This is contrary to the spirit and intention of the Agreement and is an obstacle to Hong Kong and Guangdong working jointly to make the Initiative a success. Therefore, despite that the Hong Kong port, maritime sector, the transportation and logistics sector are willing and ready, absent the co-ordination and agreement between the Hong Kong Government and the Guangdong Government and the corresponding actions taken by both governments, and absent guidelines and assistances provided to such industries of Hong Kong, these industries of Hong Kong are not ready to participate in the Initiative.

Turning to performing the role of the trade centre in the Greater Bay Area, the trading sector of Hong Kong are more than happy to take the role. However, firstly, the role is connected with the above mentioned logistics and transportation business and, secondly, the ever changing international trading environment. Hong Kong has been an important entreport for Mainland China. It has a thriving transshipment business as well. Mainland China is the second largest trading partners of Hong Kong. However, if the goods manufactured in Guangzhou, Shenzhen, Zhuhai, Foshan, Dongguan, Jiangmen, Huizhou continue to be exported directly from the port of Shenzhen and Guangzhou, it is difficult to see how Hong Kong's entreport trade and transshipment business will boom. Hong Kong has little manufacturing industry. However, the nine Guangdong cities of the Area are big manufacturing powerhouses. According to the government's statistics, Guangzhou, Shenzhen, Zhuhai, Dongguan, Huizhou have over the years created a number of

new energy industry cluster and established a new energy car production base. They have also built a national level new energy, environmental protection and energy saving industrial base. Shenzhen, Dongguan, Foshan, Zhongshan have successfully also built a national high-tech industrial base to support low carbon economy in Shanghai, Jiangmen and Zhaoqing. Shenzhen is also famous because Tencent, a world leading internet services trader and provider, and Huawei, a world leading mobile phone manufacturer, are head-quartered in Shenzhen. It exports (about 47% of which derived from the high-tech sector) accounted for 39.2% of all of Guangdong's exports and 10.8% of China total exports. Zhuhai manufactures electronic equipment, electrical appliances, electrical energy, petro-chemical and precision machinery. Dongguan is famous for manufacturing furniture, textiles, garments and electrical machinery. One fifth of Dongguan's 2017 exports are to the United States. Guangzhou is famous for its high-tech industry. The total value of Guangzhou's 2017 exports accounted for 13.7% of the total value of all of Guangdong's exports. Zhaoqing is important to Hong Kong as the 2016 value of its exports and import trade with Hong Kong accounted for 20% of the total for that year. Huizhou's primary export markets are Hong Kong, Korea and the United States. All these seem to give Hong Kong a lot of opportunities under the Initiative. However, situation has changed a lot since the United States government threatened in January 2018 to levy heavy tariff on China imports and then since March 2018 raised the tariff on steel and aluminum by 25% and 10% respectively, in April the US government started to levy a 25% tariff on a list of 1,300 Chinese goods which has a value of USD50 billion, comprising mostly sophisticated technology that China targeted for its "Made in China 2025" plan. China responded by levying a 25% tariff on a list of 106 American imports. In June, the Trump administration released a list of 1,100 Chinese products and subject them to a 25% tariff. China responded by a list of USD50 billion worth US products. On 4th July the Trump administration implemented tariffs on a further USD34 billion of Chinese goods imports. On 10th July, a further list of USD200 billion of Chinese imports were said to be subject to a 10% tariff after public hearings. These were held back following the arrangement for President Xi's meeting with the US President Donald Trump on 1st December 2018 in Argentina. The outcome of the Xi-Trump meeting was the reaching of an agreement between Xi and Trump to have a three-month cease fire period for both countries to try work out solutions that are acceptable to both countries. How effective the 1st December 2018 truce is has yet to be seen however. The Hong Kong trading houses, traders and trading associations are worried about the situation as all these affect adversely the trade of Hong Kong, including the entreport trade and the transhipment business. Such worry is well grounded as there is no sign that the trade war will end shortly. Although the Hong Kong government has implemented measures to support local trading companies when necessary but if ultimately the situation is to remain unchanged or worsens for a year or two, it is difficult

to see how Hong Kong's trade will thrive and boom under the Initiative when the manufacturing industry of the nine cities in Guangdong are affected adversely.

Turning to the role to be the Area's Legal Services Centre and Dispute Resolution Centre, similarly Hong Kong is ready to take the lead and play the role. The laws and legal system of Hong Kong are different to those of Macau and Guangdong. Under the One Country Two System policy Hong Kong continues to maintain its common law system, continues to be governed by the rule of law, continues to have an independent and transparent judiciary, continues to adopt English law (with whatever new law that the Hong Kong Legislative Council passed and the Hong Kong courts made, together with the Basic Law). Our legal system, law, legal talents (judges, solicitors, barristers and arbitrators) are second to none and are leading in Asia. Hong Kong is also famous for its arbitration. We adopt the most international arbitration procedural laws and have the most up-to-date arbitration substantive law which is, in some aspects, more advanced and flexible than those of England. Hong Kong has both the hardware and software to be the legal services centre and dispute resolution centre of the Greater Bay Area. All these should be capitalized and recognized by the Macau and Guangdong cities under the Initiative. That said, Hong Kong legal profession and practitioners of arbitration await the governments of the Greater Bay Area to adopt measures to require contracts entered into in transactions and deals concluded or performed in the Area or under the Initiative to be subject to Hong Kong Arbitration. The maritime legal profession and the Department of Justice of Hong Kong have been promoting Hong Kong arbitration and Hong Kong dispute resolution service for years. Yet without guidelines and instructions from the top and the governments, and without the mentioned governmental measures, no matter how ready the Hong Kong legal profession and dispute resolution services providers are, the idea would not work and the dispute resolution services would not be required.

One of the targets of the Greater Bay Area Initiative is to merge Hong Kong into Mainland's economy and culture and vice versa, and to facilitate free flow of employment and free flow of people in the Area. The cancellation of the requirement to apply for permission to work in China and the issuance of Residence Card to people from Hong Kong who live, work and/or study in China all help remove some barriers between the people of Hong Kong and those of Guangdong. However, it should be appreciated that the youngsters of Hong Kong give a lot of weight to the values of Hong Kong that they treasure and are used to. It may be the case that some of them would be adventurous enough to go up and work in the Guangdong cities but not until they are sure that the values of Hong Kong are appreciated and accommodated in the Area, they may continue to have concern in "going up" to work in the Area.

The author has a lot of hope in the Greater Bay Area Initiative. The Initiative brings a lot of opportunities to Hong Kong, though at the same time challenges. Hong Kong is ready to take up the roles assigned to it but guidelines and assistances from the Government must be provided as soon as possible to enable the citizens and the above mentioned industry players to know where exactly they stand and what will happen to their business under the Initiative and to render them in the position where they would be ready for the Initiative.

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Analysis And Recommendations For The Trade Imbalance Between China And The United States

Woo Sze Ngo, Charene

Introduction

Globalization increases international trade. While consumers are enjoying the benefits of a wider choice of products, both importers and exporters face the problem of an imbalance of empty containers. In this article, an analysis of a real world scenario will be conducted and recommendations provided.

Real Case Background

Currently, two major imbalanced trading partners are China and the United States. During the 1990's, for every 100 containers shipped from China to the United States, only 16 came back empty. The imbalance worsened after 1997. In 2005, for the containers shipped from China to the United States, 60% of them came back empty. In other words, China had a deficit of empty containers while the United States had a surplus of empty containers.

Analysis for the Causes of Problems (Trade imbalance)

Taking the statistics in 2015 as an example, according to the Shenzhen World Trade Organization Affairs Center Normative Technical Department, the trade imbalance between China and US is a result of the following:

1. Difference in external trade volume (Appendix 1)

The total amount of China's exports to US was around USD 483 billion, while the total amount of US's export to China was around USD 116 billion. China's export amount was more than four times that of US, creating a trade surplus for China and a trade deficit for the US.

2. Difference in types of commodities exported (Appendix 2)

For the products that were exported from China to the US, telephones were the largest amount, which involved around USD 62 billion, followed by automatic data processing machines, which consisted of around USD 51 billion. Both the telephones and the machines are regarded as general cargo because they are packaged. For products that were exported from the US to China, soybeans accounted for

the largest amount, which was around USD 10 billion. The second largest one was vehicles, which involved around USD 9 billion. Soybeans are classified as bulk cargo, which is not packaged. Vehicles can be carried by car carriers which are roll-on/roll-off vessels, not container vessels. It was also observed that the types of containers used by China and the US are different. Therefore, the empty containers from China cannot be fully utilized by US.

3. Political reasons

Since China and the US are two of the biggest economies in the world, their relationship is complicated. They regard each other as potential adversaries, as well as strategic partners. Several trade restrictions are imposed by the US:

A. Quota on China textile products

In 2005 the US Government announced it was going to impose quotas on three types of textile products from China in order to protect the US textile industry.

B. Export restrictions on dual-use goods to China

Licensing is required for dual-use items. Besides, companies on the Entity List are identified as engaging in activities related to the proliferation of weapons of mass destruction capabilities. They need to apply for licenses if they want to import dual-use items from the US. In early March 2016, three entities in China were added to the List.

C. Military sanctions on China

The U.N. Security Council banned North Korea from using ballistic missile technology. The relationship between China and North Korea is close. The US thought that China would support North Korea in its nuclear technology development. Therefore, the US imposed arms sanction on China in 2016.

These restrictions limit the types of products that can be exported from the US to China, causing an imbalance of trade between them.

Recommendations

1. Increase the usage of containers that are relatively depreciated for the trip from China to the US

Normally, a typical container has a lifetime of about15 years, then it needs to be renewed or sold to a construction site and modified to be an office. It is suggested that China should avoid using relatively new containers to export to the US. The

relatively new containers are suggested to be reserved for exporting to countries in which the trades are more balanced. Instead, increase the usage of depreciated containers for shipments to the US. When the depreciated containers are shipped to US, China can just dispose them there, or sell them to a US construction site. As a result, China will not suffer to much from the loss of a shortage of containers. On the other hand, when Chinese exporters need to purchase containers, they should purchase more second-hand containers. Taking a TEU container as an example, a brand new one costs around USD 3230 while a second-hand one costs around USD 1350. Using second-hand containers is not only cheaper, but also more suitable for exporting to the US.

2. Matching the exporting schedule

The ideal situation between China and the US is having dual-load containers between them and keeping the number of empty containers at the minimum. Although the major types of commodities exported from China and the US are very different, there are still some similarities. For instance, the third largest amount of products that are exported from US to China is microelectronic devices, which is regarded as general cargo. Therefore, the flow of containers between China and the US can be more fully-utilized when the exporting schedules of both countries' general cargoes are matched.

3. mplementation of the "just-in-time (JIT)" concept

JIT is where a company manufactures or purchases goods effectively when a customer makes an order, allowing zero inventories. In other words, materials are purchased and produced when they are needed. Applying this concept for exports from China to the US can help relieve the problem of a shortage of containers. The number of containers-in-transit can be kept to a minimum. Besides, containers are allocated when Chinese exporters receive the orders from the US. It is believed that the flow of containers will be more easily managed and thus help relieve the shortage problem.

4. Favorable policies for US exports to China

Since export restrictions play an important role in the imbalance of trade between China and the US, they should be eliminated in order to promote a trade balance. Restrictions involve political concerns and are not easily cancelled. However, China has a policy about placing tariffs on musical instruments imported from the US. If China elimates this tariff on US musical instruments, it is favorable to US. Also, musical instruments are regarded as general cargo, which is the same as products that China mostly exports to the US. As a result, the containers can be more fully-utilized and relieve the problem of imbalance of containers.

Conclusion

Handling the movement of empty containers requires extra cost of doing business for shipping companies, importers and exporters. China and the US should try their best to make the trade between them to the point of equilibrium, so that both of them can enjoy more benefits from international trade.

Reference

Akbar, J. K., Nagendra, K. B. and Hamidreza, F. T. (2013, March). Just-in-Time

Manufacturing System: From Introduction to Implement. *International Journal of Economics, Business and Finance*, 1(2), 7.

Corr, A. (2016, February 13). Sanction China For Its Support Of North Korea.

Forbes. Retrieved from http://www.forbes.com/sites/anderscorr/2016/02/13/san ction-china-for-its-support-of-north-korea-and-so-much-more/#417fad21316a

Fullerjan, T. (2006, January 29). China trade unbalances shipping. *New York Times*.

Retrieved from http://www.nytimes.com/2006/01/29/business/worldbusiness/chi

na-trade-unbalances-shipping.html?_r=0

Grand World. (2016, January 10). 二手貨櫃價格 . Retrieved from http://www.gwls88.com/forwarder/container_2ndhand.html

Ko, C. P. (2009, March 3). 勝獅將大發獅威 . Apple Daily. Retrieved from http://hk.a

pple.nextmedia.com/financeestate/art/20090503/12710647

Li, X. N. and Zheng, P. J. (2014, January). Analysis of Cost-Benefit Ratio for Dual

Load Transportation Using Empty Container. *Applied Mechanics and Materials*,

505(1), 873-877.

Poon, D. (2016, April 29). Sino-American Trade Relations in the Lead-up to the 2016

US Presidential Election. *Hong Kong Trade Development Council*. Retrieved

from http://hkmb.hktdc.com/tc/1X0A5ZV8/%E7%B6%93%E8%B2%BF%E7%

A0%94%E7%A9%B6/2016%E5%B9%B4%E7%BE%8E%E5%9C%8B%E7%

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%E4%B8%AD%E7%BE%8E%E8%B2%BF%E6%98%93%E9%97%9C%E4%

BF%82

Rodrigue, J. P. (n.d.). The Repositioning of Empty Containers. *The Geography Of*

Transport Systems. Retrieved from https://people.hofstra.edu/geotrans/eng/ch5en

/appl5en/ch5a3en.html

Shenzhen World Trade Organization Affairs Center Normative Technical

Department. (2015). *2015 年 全 年 美國進出口形勢分析簡報* . Retrieved from http://www.szwto.gov.cn/news/ewmflash/201662110531146.pdf

Sunshine Container Service. (n.d.). Products. Retrieved from http://www.container-ce

ntre.com/export-container.html

World Business. (2012, November 18). US imposes quotas on Chinese textiles.

Retrieved from http://www.nbcnews.com/id/3540959/ns/business-world_busines

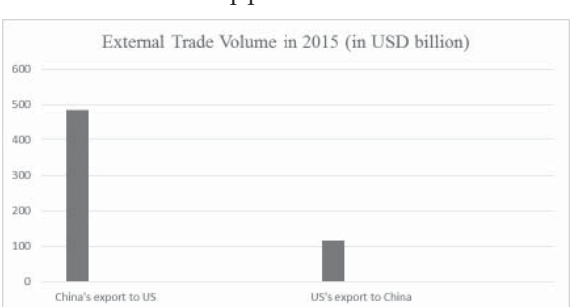
s/t/us-imposes-quotas-china-textiles/#.WBHJJvnvPTk

Zhang, M. Y. (2014, October 11). 我國樂器進出口復甦 進口關稅調整作用顯現 .

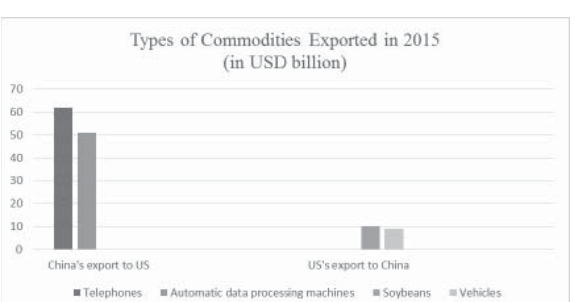
Xinhuanet. Retrieved from http://news.xinhuanet.com/fortune/2014-10/11/c_111

2785450.htm

Appendix 1



Appendix 2



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'Brics' As A Genuine Alternative To The Future Well-Being Of The Developing World And Global Supply Chains: A Proposed Framework For Research, Education, And Training

Adolf K.Y. Ng/Pradip Putatunda

The ever-widening gap between the rich and the poor needs to be addressed immediately otherwise the future is bleak for the majority of the world population. Poverty keeps increasing in many countries, especially developing ones. For this matter, current socioeconomic situation is very alarming that would only attract further uncertainties, leading to chaos and, sometimes, even uprising and wars. It is clear that the mainstream, 'old' intergovernmental funding institutions (e.g., IMF, World Bank) are not addressing such problems satisfactorily, partly due to the conditions and 'strings' attached to loans that are supposed to help developing countries and emerging economies to solve key economic and social problems. In the past years, many countries/regions have already voiced their concern, especially with regards to the strings attached to many of the loans from such organizations that, in our view, is often contradicting the basic needs for human and social well-beings where lienees become almost impossible to benefit from the outputs generated by such loans. Such institutions urgently need fundamental reforms so as to properly reflect the real circumstance that exists nowadays, as it becomes increasingly clear that their current structure and practice are not benefiting the developing world.

In this regard, BRICS nations (Brazil, Russia, India, China, and South Africa) seem to have well-positioned as potential alternative outlets to the improvement of access to capital so as to boost growth and address economic and social inequality. Since its foundation, there is evidence suggesting that BRICS nations have introduced ambitious plans that strive to promote progress in terms of cooperating in the many areas, including the exchange of technology, finance, education, environment, transport and infrastructures, and energy, both among BRICS nations and between BRICS nations and other developing countries. Some of the notable legacies include a number of strong government initiatives that allow BRICS nations reaching out to neighbours and the world, such as the Chinese government's Belt & Road Initiatives (BRIs) and the establishment of the Asia Infrastructure Investment Bank (AIIB) that pinpoint the challenges of developing countries/ emerging economies when they borrow/ get funded from 'old' funding institutions. On the other hand, China has demonstrated that it is possible to lift huge numbers out of poverty with an appropriate reform approach and policy. Despite some challenges that exist between among BRICS nations (e.g., territorial disputes between

China and India, the tough economic periods in Brazil, Russia, and South Africa), that has largely been put aside and cooperation among them has improved dramatically recently. Notwithstanding, a lot has gone on with this alliance and the consistency of the BRICS summits is an illustrative exposition to this. Accounting for at least half of the world's population and a quarter of the world's GDP, it is not an overstatement that BRICS has the potential to become the main driver of global growth in the foreseeable future.

In our view, however, the aforementioned alternatives are still only 'potential alternatives' as major questions remain. For instance, while there is tremendous growth across global economies, only few benefits from this, which is especially pronounced in the developing world, with corruption and the lack of good governance partly to blame. Moreover, as mentioned, fundamental differences remain among BRICS nations, where it is an open secret that the Indian government is largely sceptic on China's BRIs. To improve the coherence among BRICS nations, there are numerous gaps that require further research, education, and training. In our view, these do not only offer invaluable opportunities for academic and educational institutions to exploit, but also to ensure that BRICS can realistically become a genuine alternative (or even the mainstream channel) to the well-being of the developing world in the foreseeable future. Helping BRICS and the developing world to achieve such a vision serves as the key objective of this article. For the rest of this article, we will identify the major problems that the BRICS nations, as the genuine alternative for the developing world, must tackle and, simultaneously, the roles that researchers and educators can play in this aspect. Broadly speaking, we can categorize them into the following points: 1) inequality, 2) unemployment, 3) immigration and uncontrolled population growth, 4) trade globalization and international relations, 5) uncontrolled money supply, 6) infrastructure planning and investments.

Inequality. This involves inequality in the standard of living among the populace especially in the developing world, BRICS nations, as mentioned, have made substantial efforts to address this. However, it is perceived still by many that the policies are rather widening the gap between the rich and the poor. This implies that despite some countries/regions have registered growth, benefiters mostly remain among the rich and huge corporations - some of which originate from places outside the country/region. In this regard, homegrown entrepreneurs are on continuous decline. In areas where it is not the case, capital is not available to support their ideas. At the same time, improper investments may create regional inequality. For instance, there are voices (even among the Chinese government) that the rapid development of High-Speed Rail (HSR) in China has accelerated regional inequality, where peripheral areas that are not covered by HSR have started to suffer substantially due to the agglomeration of financial resources towards the HSR-covered areas. In our view, there is an urgent need to re-assess and re-develop appropriate policies

on how funding and investments should be enacted, including new ways of doing business, so that inequality gap can be addressed through appropriate reforms.

Unemployment. It is another major challenge for BRICS nations and developing countries. For many families, there are a few people who are working, and so this puts so much pressure on them. Companies do not employ locals, making it hard for them to make ends meet. In the case where they are employed, the positions they occupy are mid-level, while decision-making and top-level appointments are mostly not reserved for locals. This situation is worrying as these countries/regions do not benefit enough. The companies use the excuse of not finding the expertise. However, they also refuse to train these people. Furthermore, some companies bribe government officials and invade tax, reducing the revenues of the hosting government. Resource-based economies suffer from lack of value addition. For example, a country like Ghana that produces gold, exports raw gold, and imports items produced from gold at a higher cost. What it means is that, there is little money earned from having gold as a commodity. The country only benefits from employing low skilled workers in the production phase while the value addition phase creates more jobs in the form of marketing and refining. These jobs are mostly taken out of the country. It is the case for oil as well. On the other hand, with the advent of robots and other technological innovations, the likelihood of losing jobs is even more pronounced. Efficiency through technological innovation means some of the operations at the mines which used to employ tens of thousands of people will now be handled by a robot implying laying off. In the long run, such development would pose challenges to the economy hence growth and then development. If there is no employment there will be no money to spend hence demand for goods will reduce and so the result will be lower growth.

Immigration and uncontrolled population growth. Many people from BRICS nations, especially the younger generation, are leaving (or trying to leave) their home countries in waves in order to search for greener pastures. For instance, brain-drains away from India and China to western countries are well-documented. However, very often, they fail to get integrated in the countries/regions that they move to as the professional qualifications that they have earned in their home countries are often not recognized (or at least not immediately recognized) in the country/region that they have moved to. For example, it is not abnormal for lawyers and accountants from India moving to Canada and spend substantial time working in non-professional/low-skilled jobs (e.g., taxi driver, waitress) due to the fact that their professional qualifications are not recognized unless they have got through a re-qualification process that may need substantial money (e.g., attend a program in a college) and take years to complete. When this happens, the few investments done by the country in its populace through education are lost and, in some cases, even wasted in other country/region. Thus, in our view, it is extremely important to find ways to convince people from the BRICS nations and developing

countries that it is worth staying in their home countries/regions and play significant roles to grow their respective economies and societies. Without people growth may not be possible. Conditions need to be improved in these countries/regions so that there will be reasons for people, especially professional ones, to stay. On the other hand, uncontrolled population growth in countries, such as India, is a serious challenge among BRICS nations and developing countries. Much as population is key to growth, we argue that it is the educated and productive population that is the most-needed. While some countries having huge population, they are uneducated and so less productive. Education does not necessary mean having a tertiary degree but the ability to at least to read, write, and express opinions sensibly. An educated populace makes execution of programs easy so is planning. It is important that religious beliefs and other reasons for uncontrolled population be looked at critically as resources become scarce and cost of living increases. What it means is that education, opportunities, health, and employment become difficult to get. All these require substantial improvements in terms of population policies. However, how this can be done requires further efforts in research, education, and training.

Globalization and international relations. This is an issue that needs to be looked at very critically. Thanks to globalization, major powers sometimes manage to take advantage of the poor and (continuously) exploit their resources for the better ones. Furthermore, protectionism and having blocs of trading countries deny access of markets to the developing world through various measures that block/slow down the flow of technological and scientific knowledge (e.g., patents). This implies that the lack of investments and business is only effectively implemented in a selected few countries/regions. In general, protectionism and isolation do not result in growth and reduce trade and adversely affect consumers (by raising the cost of imported goods) and likely to harm producers and workers in export sectors, both in the country implementing protectionist policies, and in the countries protected against. Indeed, throughout history, there is evidence indicating that protectionism is directly linked to major economic crises. But what is worrying is that protectionism is gaining momentum recently with Brexit and the election of Donald Trump to the US Presidential Office (and its accompanied 'Trump effect') as the schematic expositions. These incidents highlight the criticality of alternative solutions to the future economic and social well-being of the BRICS nations and developing countries. Given the realities of international relations where major powers strive for more global and/or regional influences, however, there is a need to ensure that the BRICS nations do not fall into the same trap. Indeed, experience from the past decades strongly suggested that many BRICS nations, notably China, were actually advocates of globalization. It is thus pivotal for researchers and educators to conduct studies that will ensure senior policymakers to develop the right policies and regulations so that international trade can be used to create better international relationship and environment, not the other way around. It is much easier to say than

do due of the high probability of short-term loss/sufferings, but in our view, an exit from the integrated world is likely to be costlier in the long term.

Uncontrolled supply of money. This issue needs to be looked at much more carefully. In economics, it is widely understood that the end result of uncontrolled money supply would be that the initial positive effect of increases in pensions and salaries would be eliminated by the subsequent higher cost of living caused by increased inflation. In turn, this leads to demands for even higher increases thereby leading to a vicious inflationary cycle. However, many central banks have resorted to this measure (due to its easiness to do so) where it is only a short-term fix to a huge problem. It may seem alright in the short term, but the consequences in the long term are dire. Proper research is required so as to find out how this can be avoided beyond the use of gold and/or silver. If it is done properly it will improve the health of the regional economy. This will in turn affect the socio-economic stability. In this case, it is extremely important to look at placing priority on short-term visions (rather popular among countries/regions with democratic political systems) would not result in (always) implementing policies that aim to address short-term fixes. In this regard, one should note that the mechanisms of global/local financial systems have evolved over time. Rather than as the only way of getting loans from banks, business nowadays have many more options in terms of direct financing (e.g., venture capital). It is important to ensure that new policies on money supply actually reflect such an evolution.

Infrastructure planning and investments. While many works have addressed the importance of sustainability in infrastructure planning and investments (e.g., transport and logistical facilities), many put the attention on how such facilities can achieve well-defined benchmarks and not many directly address how infrastructures affect the economic and social well-being and functioning of countries/regions. In many infrastructure investment plans, they only treat infrastructures (and the connectivity created by such infrastructures) as part of an 'operational' system (e.g., a supply chain that only focuses on how producers can distribute certain products to a well-defined group of consumers) rather than a 'regional' system (that pays attention on how infrastructures and the system creates by them affect the economic and social development of their surrounding areas and regions). Understanding that infrastructures are often capital-intensive and constructed dedicated for a particular purpose, their existence does not necessarily pose positive impacts to surrounding regions and, in some cases, even pose negative impacts. This is not helped by the fact that many such facilities are operated by private operators (often through concession agreements) that do not encourage planning and investments for the long term. However, it is quite clear that the impacts of infrastructures on surrounding regions are getting more and more important, especially with the recent strong government initiatives. For instance, BRIs is said to aim 'promoting the connectivity of Asian, European and African continents and their adjacent seas, establish and strengthen partnerships among BRI-participating countries/regions,

set up omni-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced, and sustainable development in these countries/regions. The outcomes of such initiatives, however, can be positive or negative, exemplified by the impacts of HSR on inequality in China as mentioned earlier. If BRICS serve as the alternative funding outlet for major, capital-intensive infrastructure projects, there is an urgent need to re-define the terms and 'strings' attached so as to ensure that they can actually contribute to the economic and social well-being of countries/regions, especially among developing ones. Of course, it is also extremely important to ensure that such infrastructure investments will not lead to excessive overcapacity, the 'white elephants' that pose few (if any) positive impacts to economies and societies. There is a need to investigate how society stakeholders feel about the adequacy of existing infrastructures, how they can be improved (e.g., so as to facilitate international trade and regional growth) and, perhaps most importantly, how society stakeholders can participate in their planning and management so that they are actually relevant to social needs.

The above issues illustrate the importance, and indeed opportunities, of research, education, and training for the well-being of BRICS nations and developing countries. This implies the growing significance of regional and global sustainability. In this case, sustainability is far from just achieving certain environmental objectives or benchmarks, but also pivotal to continuously improve economic and social welfares in general. To ensure that BRICS can act as a genuine alternative to the future well-being of the developing world, we call for governments, inter-governmental organizations, and NGOs to offer more support to tertiary institutions so as to catalyze the research, education, and training that can certainly add value to the issues as mentioned above.

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Law Column -
Would a Foreign Seaman be entitled to make a Jones Act Recovery because the Injuries were suffered in US Waters?

Owen Tang/ Brian Sun/Sik Kwan Tai

The Jones Act

Historically, US courts did not recognize a seaman's right of recovery for personal injuries caused by the negligent conduct of his employer. In 1920, the US Congress passed the *Jones Act* which allowed an injured seaman to bring "a civil action at law, with the right of trial by jury, against the employer" if the injury occurred during his employment.

Although the US Congress limited recovery under the *Jones Act* to American citizens and permanent resident aliens, foreign seamen are not categorically prohibited from bringing legal actions under the Jones Act. The US courts have looked to several factors to determine whether the event leading to the personal injury of a foreign seaman may justify the Act's purview. The US Supreme Court articulated these factors in the famous *Lauritzen v. Larsen* (1953).

These factors include:

(1) the place of the wrongful act;

(2) the law of the flag;

(3) the allegiance or domicile of the injured seaman;

(4) the allegiance or domicile of the defendant shipowner;

(5) the place of formation of the employment contract;

(6) the inaccessibility of the foreign forum;

(7) the law of the forum; and

(8) the base of operations of the shipowner.

Purpose of this paper

This paper aims to analyze the legal implications of only factor #1 (the place of the wrongful act) out of the above factors. The paper investigates whether a foreign seaman is entitled to maintain a personal injury action under the *US Jones Act* if he successfully proves that his personal injuries happened in US waters. Eight important US cases (from the mid-1950s to 2014) are selected to illustrate the relevant legal reasoning applicable in such regards.

Place of the Wrongful Act

The location of the wrongful act is the least significant factor in determining *Jones Act* applicability. The Jones Act decisions indicate that many foreign seamen have

suffered injuries in US waters, and US court's have refused to apply the *Jones Act*. The main judicial reason is that the US courts have focused on "where the defendant engaged in the conduct giving rise to liability, not where the seaman's resulting injury occurred." *Lauritzen* (1953)

For example, in *Romero* (1959) a Spanish seaman was injured in the port of New York/New Jersey while working aboard a Spanish vessel. The injured seaman sought a *Jones Act* recovery against the Spanish vessel owner and a US corporation which acted as husbanding agent for the vessel while in New York. The US Supreme Court held that the fact that the injury occurred in the Port of Hoboken, New Jersey was insufficient for applying the *Jones Act*.

In *Koupertoris* (1976), the defendant shipowner was a Liberian corporation with a principal place of business in Greece. All of the outstanding shares of the corporation were owned by Greek residents. The defendant shipowner was not licensed to do business in New York; however, it has maintained a substantial financial tie with New York, such as mortgages, bank accounts and an outstanding letter of credit. The defendant shipowner's New York activities were carried out by New York Agencies, such as forwarding funds to the ship master and appointing husbanding agents.

During the year of the injuring event, the vessel called seven times at different U.S. ports. However, it never visited New York during that period. The Greek seaman executed his maritime employment contract in Greece, with the shipowner's Greek hiring agent. The alleged accident occurred in waters off the coast of Maryland, and the Greek seaman received medical treatment in Baltimore, New Orleans, and Athens, Greece, successively.

The Court of Appeals in the Second Circuit (New York) has recognized that the *Jones Act*, by its terms, may be invoked by foreign seamen against foreign employers. It pointed out that the Supreme Court had limited its application to suits in which the foreign employers have some substantial contact with the U.S. In order to determine whether the contacts of the defendant shipowner to New York are 'substantial', the Court of Appeals referred to *Lauritzen v. Larsen* (1953) in which the Supreme Court enumerated the place of the wrongful act as one of the factors worthy of consideration.

The Court of Appeals pointed out that the only factor favoring the foreign seaman is the place of injury. The ship's flag was Liberian; the seaman was a resident of Greece, the employment contract was executed in Greece. There is no evidence that the defendant shipowner was controlled or beneficially owned by Americans, and the base of operations of the shipowner was Greece. Said the Court of Appeals: "the Plaintiff's injuries occurred off the coast of the United States is purely fortuitous, and a factor of minimal importance in supporting application of the Act. Standing alone, we believe that it is not a substantial contact with the United States." Accordingly, the Court of Appeal decided that the Greek seaman was not entitled to a *Jones Act* recovery.

In *Fisher* (1980), a Greek seaman was hired in Greece for a vessel registered in Greece. The vessel was owned by a Liberian corporation and was operated by a Panamanian corporation.

The seaman was killed while fighting a fire on the vessel as it was docked in Beaumont, Texas. The court held that, although the defendant shipowner made a strong case for the application of Greek law, the vessel's "entire business activity prior to the accident" was in the United States. Therefore, the *Jones Act* could be applicable as the vessel had a substantial base of operations in the United States. Facts that were favorable to *Jones Act* applicability included: (1) after the purchase of the vessel, it proceeded directly from Spain to the U.S. without a cargo; (2) the first cargo voyage under its new owner was to carry corn from the U.S. to the Soviet Union; and (3) the vessel was purchased for the purpose of that trade.

In *Volyrakis* (1982), the Court of Appeals in the Fifth Circuit (Louisiana) distinguished the holdings with that of the *Fisher*. In *Volyrakis*, a Greek seaman was injured while working on board of a vessel which was of Greek registry and was owned by a Panamanian corporation. The directors and officers of that Panamanian corporation were Greek citizens, and no shareholder was a citizen or resident of the United States. The corporation had no office in the United States and since the vessel's purchase, the vessel had made only three trips to the United States. The Greek seaman in *Volyrakis* argued that the court should follow the *Fisher* and therefore the Jones Act should be applicable.

Unlike in *Fisher*, the vessel in *Volyrakis* did not have a connection between its "entire business activity" and the United States. Said the Court of Appeals: "The mere fact that a vessel periodically visits this country is not enough to merit application of the Jones Act." It therefore affirmed the lower court's finding that the Jones Act shall not apply when the only factor weighing in its favor is the place of the wrongful act happened to be in an American port together with the mere facts that the vessel periodically visited American ports.

In *Dracos* (1983), the defendant shipowner was a Greek corporation. All vessels owned by the corporation flew the Greek flag and were registered under Greek law. The injured seaman, Dracos, was a Greek citizen with Greek domiciliary. The employment contract between Dracos and the defendant shipowner was drafted and executed in Greece as a collective bargaining agreement of the Panhellenic Seaman's Federation. The contract specified that future disputes should be governed by Greek law in Greek courts.

At the trial level, the judge found that only two facts favored the selection of American law: (1) Dracos died while the vessel was berthed in Norfolk, United States; and (2) his widow sued in Virginia, United States. The trial judge opined that these two factors were relatively unimportant in a maritime context. Because a ship may travel through waters governed by various nations, and the nature of maritime commerce is such that a vessel will inevitably have contacts with many different ports in different nations. If the

courts of each nation with substantial contacts applied their own law, the overlapping duties imposed on shipowners would blight maritime shipping. As is often the case with maritime torts, the place of the wrongful act in this case was fortuitous. In affirming the decision of the trial judge, the Court of Appeals in the Fourth Circuit (Virginia) opined that it is the very nature of maritime commerce that a vessel will inevitably contact many different nations; therefore, the fortuitous nature of the place of wrongful act should not be a significant factor in the choice of law analysis. In fact, the widow had remedies available in a Greek court had she chosen that venue.

In *Rationis* (2005), cargo interests argued that the place of the wrongful act should be the location of the casualty (where the vessel sank). The Court of Appeals in Second Circuit (New York) rejected such argument and held that the place of the wrongful act should be the place where the negligence occurred. The reasoning is that: "because it is the state where the negligence occurs that has the greatest interest in regulating the behavior of the parties." The Court of Appeals also pointed out that by looking at the citizenship of the injured parties, the case has more connection to that of the UK than the US, as the citizenship of the insurer who shall bear the greatest share of the claims and also the insurer for the shipowner and ship operator were UK insurers. Furthermore, the destination of the lost cargo does not dictate the governing body of law; according to *Lauritzen*, a nation has a compelling interest in protecting its nationals, not its imports. Therefore, the Court of Appeal decided that the place of the wrongful act should be "the place where the negligence occurs, not the location where the vessel sinks."

In *Cooper* (2009), the court encountered an action not directly by a seaman, as was in *Lauritzen*, but rather for indemnity, contribution and equitable subrogation. The facts revealed that only the Netherlands appeared to have an interest in the third-party strict liability claims, while the U.S. had, at most, a tangential interest. The four appellants argued that the injuring event occurred on the high seas, where the defect in the food lift manifested itself. Thus, the court had not pointed either to the application of the Jones Act or to Dutch law.

The Court of Appeals in Eleventh Circuit (Florida) held that the place of the wrongful act should point to the location where the construction of the defective product took place. The analysis should not be focused on "the place where the injury occurred, a remote area in the sea where the ship happened to have been at the time the effects of the defect product came to fruition." The wrongful act was about the manufacture and installation of the food lift, which took place in the Netherlands, where the ship was designed and built. Therefore, the location of where the food lift was built would strongly favor the application of Dutch law because the Netherlands had an interest in regulating such activity occurring within its borders.

In *Vazquez* (2014), the trial judge found that quite a number of factors weighed against the application of the *Jones Act.* First, the foreign seaman Vasquez

suffered his injury in the Bahamas, not in the United States; and he domiciled in the Dominican Republic. Second, the injured seaman signed the employment contract in the Bahamas, and the Bahamas provided an accessible forum. Third, the vessel was registered under the Honduran flag. Fourth, the ship owning company was incorporated in the Bahamas and had its principal place of business in Nassau.

The injured foreign seaman argued that the defendant Bahamian shipping company had derived an insubstantial percentage of its income from business transactions relating to the use of ports in the United States. Therefore, it should have satisfied the substantial US connections and warranted the applicability of the *Jones Act* recovery.

The fact that one US citizen owned 40% of the ship owning company could not demonstrate sufficient US connection because he retired in 2002, long before the injuring event and only retained his status as the president in name only. The person who managed the day-to-day operations of shipowning company was not a citizen of, and did not reside in the United States. He maintained a mailing address and telephone number in Fort Lauderdale, and such types of contacts would not transform him into a resident of Florida.

Without other supporting evidence, the Court of Appeals in Eleventh Circuit (Florida) distinguished between the 'place where the injuries occurred' (in the Bahamas) and 'the place where the wrongs fully accrued' (on board of the vessel), and the place of wrongful act should not be "the location where the claims fully accrued."

Conclusion

Throughout reading 60 years of US cases related to the "place of the wrongful act" and Jones Act applicability, the judicial reasonings were consistent that the wrongful act is the least significant factor in determining *Jones Act* applicability. US Case law has consistently indicated that many foreign seamen failed to subject their defendant shipowners to *Jones Act* liability even though they successfully proved their personal injuries occurred within US waters. The main judicial reason is that US courts have focused on the locations where of the defendant shipowners committed their wrongful conduct, and not on the locations where the seamen suffered their injuries.

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關稅戰對全球貨櫃貨物運量的影響有限
US-China trade indicators stay high as shipping shrugs off tariffs

曹穎 / 徐劍華

關鍵字】貿易戰；關稅；運輸需求
【keywords】trade war；tariff；transport demand

對從中國大陸進口到美國的貨物徵收關稅，最壞影響下也只會影響到承運人。但分析師表示，即使今年改善運力供需平衡也不會改變承運商全年虧損的局面。

關稅戰最多影響全球貨櫃貨物運量的 1%

儘管貿易戰在緊鑼密鼓地進行中，但樂觀主義者仍然認為全球運輸需求成長將超過運力供給。

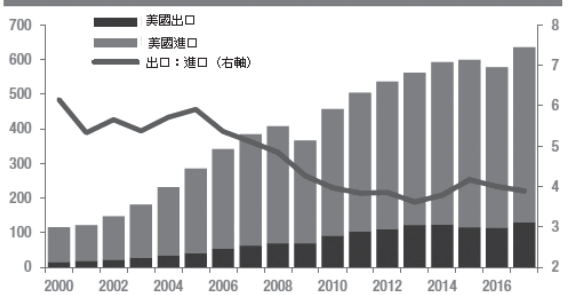
據 Drewry（Drewry Shipping Consultants）的分析師稱，如果美國和中國大陸之間的貿易戰升級，那麼世界貨櫃貨物運量中的 180 萬 TEU 將可能因關稅的增加而喪失市場，這個數字接近全球貨櫃貨物運量的 1%。

2018 年 7 月 6 日起，美國海關對 818 類大陸產品徵收 25% 的附加關稅，價值約 340 億美元。

第二個清單中涵蓋 160 億美元的 284 個新推薦產品正在審查中，儘管大陸以自己的關稅報復，但仍面臨進一步關稅的威脅，將有多達 4000 億美元的貨物緊隨其後。

但 Drewry 的研究表明，6 月 15 日公佈的修訂後的清單對工業產品的權重很高，同時也很容易從其他交易夥伴那裡得到。

圖1 美中貿易（10億美元）



資料來源：美國海關

Drewry 的報告說：「去年，大陸僅向美國出口了第一批產品的 13% 左右，第二批產品的出口量約佔 8%。從目前情況來看，最初兩個中國大陸產品清單的影響在 20 萬 TEU 左右，相對較小。」

Drewry 的評估是基於三種情景，在其季貨櫃預測中公佈的，對從中國大陸進口商品的關稅範圍為 500 億至 4500 億美元。

Drewry 貨櫃研究經理西蒙 亨尼說，通過其他採購方案，中國大陸產品在這些初始產品清單上的關稅增加將極有可能創造少量貿易轉移，並提升美國其他出口夥伴的前景。

西蒙 亨尼說：「即使考慮到與其他交易夥伴的針鋒相對的措施和爭端，目前對貨櫃需求的風險威脅還是相對較低。但如果附加關稅即將到來，顯然存在潛在的問題。」

他說，最大的風險是不可預測性和貿易戰的潛在可能性，它們足以打擊全球經濟的信心。

Drewry 公司將其未來兩年的運輸需求成長預測分別上調至 6.5% 和 5.8%，並預計運力供給的成長率為 5.4%，支持供需平衡的重新平衡。

亨尼說：「今年，由於運輸需求成長和運力供需平衡狀態的逐漸改善，承運商將獲得一些收益，但也會帶來更多的痛苦。燃油價格的不斷上漲使我們不得不削減對於行業盈利性的預測，而在 2018 下半年，預計運價將會適度上升，但不足以扭轉局面。從某種意義上說，現在的需求旺盛對承運商來說是個問題，因為每運送一個額外的貨櫃只會增加虧損。運得越多，虧得越多。」

托運人呼籲對貿易戰應保持冷靜

據托運人和貨運代理行說，7 月 6 日之前美國對大陸商品加徵關稅，對美國貨櫃港口的進口量幾乎沒有影響，但跨太平洋航線的運量可能會在今年晚些時候受到負面影響。在貿易戰前，托運人應保持冷靜。

從 2018 年 7 月 6 日開始，美國海關對 818 種大陸產品加徵 25% 的關稅，合計約為 340 億美元。

儘管一些分析家預測在截止日期前成交量會激增，但亞洲的貨運公司的貨運需求模式幾乎沒有變化。

總部位於香港的貨運和物流承運商 Janel 集團董事總經理帕爾 崔表示，除了上週末訂艙量短暫飆升外，香港和大陸的貨櫃市場一直「非常安靜」。

香港貨運代理協會主席博連 吳說，跨太平洋航線的艙位比較緊張，但尋找艙位仍然不是問題。

一家航運公司的資訊源告訴勞氏日報（Lloyd’s List），第一批關稅主要針對的貨物往往不會被貨櫃化。他說：「大多數受影響的商品並不總是通過貨櫃運輸，因此我們沒有看到任何明顯的變化。」

然而，一些航運公司已經發現了提高運價的機會，7 月 1 日公佈的跨太平洋航線 40 英尺貨櫃的總體運價將比上個月增加 700 到 1000 美元。與此同時，從亞洲到美國東海岸和西海岸的即期運價都在 7 月初跳躍上漲。

緊跟著上半年令人沮喪的貿易而來的是，行業分析師 Alphaliner 稱之為「跨太平洋貨運戰爭」的噩夢，一些承運商撤銷了航線，最終退出了市場的競爭。

川普政府審查了 284 種涉及 160 億美元的中國大陸出口產品的第二份關稅清單。美國政府還威脅說，如果中國大陸威脅通過自己的關稅報復，將進一步徵收多達 4000 億美元商品的關稅。

據美國全國零售聯合會（NRF）稱，根據托運人的說法，中國大陸和其他交易夥伴圍繞美國關稅和反措施的不確定性，正在造成供應的不確定性，這可能會影響到今年晚些時候的進口量和模式。

美國全國零售聯合會副總裁約內登 戈爾德說：「一般來說，零售商正在努力解決如何實施關稅以及繼續升級和加徵關稅所帶來的額外威脅。」

戈爾德在接受「勞氏日報」（Lloyd’s List）的採訪時說，今年夏天美國進口旺季的力量可能會受到中美關稅戰升級的影響，儘管大多數供應鏈的決策現在是不可逆轉的。

他說：「目前還不清楚貿易戰對後期旺季會有什麼影響。隨著附加關稅在進口和出口上生效，這肯定會對港口的輸送量產生負面影響。對於進口來說，採購和供應鏈的決策是在幾個月前做出的。這些決定現在不能改變。關稅的額外費用可能會傳遞給最終消費者。」

戈爾德說：「美國貨櫃化出口也可能受到影響。對於可能遭受報復性關稅的出口，如果海外客戶不願意支付額外費用，這些產品也可能會遭受銷售損失。這可能導致出口減少，這將影響港口輸送量。」

托運人也可以越來越多地尋求在中國大陸以外的地區採購產品以避免關稅。iContainers 公司的副總裁克勞斯 萊斯德爾說：「我預計進口產品的進口量會下降一段時間。進口商將開始尋找替代供應商，否則，如果他們無法在其他地方找到更便宜的解決方案，最終不得不嘗試接受加稅。」

但戈爾德說：「尋找替代生產來源的過程短期內不會影響進口航運流。一些零售商正在評估在中國大陸以外的國家採購產品的選擇。不幸的是，開發新的採購夥伴需要數月甚至數年才能滿足你的所有需求。關稅最有可能在一天結束時傳遞給最終消費者。」

隱性稅收不會使國際貿易發生重大改變

貨櫃航運進入夏季高峰期，進口到美國的成交量仍然居高不下。

隨著貨櫃航運進入跨太平洋航線的高峰季節，鮮有跡象表明，中國大陸和美國徵收的關稅對貨運水準有任何影響。

鑒於全球貿易保護主義日益加劇的威脅，來自中國大陸和美國的最新貿易指標描繪出令人驚訝的積極態勢。例如，在美國，6 月零售額略高於 5 月份，同比成長 4.2%。

美國全國零售聯合會（NRF）首席經濟學家傑克 科倫亨茲說：「儘管美國與中國大陸和其他國家存在貿易戰，但全國零售聯合會斷言美國經濟成長仍在繼續，健康的零售銷售報告與潛在的經濟勢頭一致，零售銷售量穩步成長。」

科倫亨茲說：「最大的問題是，家庭開支能否繼續這樣的上升步伐，這種上升步伐正在推動當前的經濟週期。我們認為他們可以，但對前景的巨大風險是貿易戰，它可以提高價格，同時降低消費者信心和家庭購買力。」

野村證券的一份備忘錄說：「6 月份，中國大陸出口同比成長 11.3%，比 5 月份錄得的 12.2% 成長略慢。我們預計，由於人民幣 2017 年升值，所以今年下半年出口成長將進一步放緩，出口受到美國出口關稅的影響，中國大陸一些主要出口目的地成長疲軟。」

備忘錄說：「展望未來，由於出口仍佔國內生產總值的 10%，製造業勞動力的 25%，國內需求減弱，由於去槓桿化運動，我們仍相信北京將找到辦法支持出口成長。我們預計出口成長放緩會經常給帳戶和人民幣帶來下行壓力，相信中國大陸可能願意在今後幾輪與美國的貿易談判中做出讓步。」

NRF 的遠期信心反映在最新一期《全球港口跟蹤》（Global Port Tracker）。該報告由 NRF 和哈克特協會共同編制。該報告預測，儘管對中國大陸產品徵收關稅，7 月和 8 月美國進口量仍將創下新的月度記錄。

美國全國零售聯合會（NRF）副總裁約內登 戈爾德說：「零售商無法輕易或迅速地改變其全球供應鏈，因此中國大陸和其他地方的進口預計在可預見的將來繼續成長。隨著關稅開始衝擊進口消費品或生產美國商品所需的零部件和設備，這些隱性稅收將意味著美國人的更高價格，而不是對國際貿易的重大改變。」

《全球港口跟蹤》覆蓋的港口在 5 月份處理了 180 萬 TEU，最新的月份是在事實資料可用之後。該報告稱：「從 4 月起，夏季商品的旺季開始成長，同比成長 4.3%，比上個月上升了 11.6%。6 月預計同比成長 6.8%，7 月預計成長 3.8% 至 190 萬 TEU。」

該報告稱：「6 月的數字與 2017 年 8 月一個月內進口的 183 萬 TEU 的記錄相吻合。7 月的預測將打破這一紀錄，而 8 月應該創下另一個紀錄。雖然貨物數量與銷售不直接相關，但創紀錄的進口反映了今年春天零售商看到的強勁業績，以及今年剩餘時間內持續成長的預期。」

參考文獻：

1. *James Baker: Tariffs threaten 1% of global box trade, says Drewry, Lloyd's List 04 Jul 2018*

2. *Mike King: No container spike ahead of tariffs, Lloyd's List 05 Jul 2018*

3. *Mike King: US-China trade indicators stay high as shipping shrugs off tariffs, Lloyd's List 19 Jul 2018*

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AA TALK

HULL INSURANCE CLAUSES – Agency Commission Unrepaired Damage

Raymond Wong

(As noted in Issue 122 the Editor of this column would visit ITC-Hulls 1/10/83 with the assistance of the one "ITC HULLS 1.10.83" which was written by Mr. D. John Wilson who kindly allowed the Editor copyright on his book for any future editions.)

AGENCY COMMISSION

Almost every accident to a ship results in the Ship-owner or Manager encountering considerable extra work and, for instance, in the case of a serious stranding, this might include arranging for:

- Salvage,
- Entry into a port of refuge,
- Surveys,
- Towage to another port for repairs,
- Temporary and/or permanent repairs,
- The obtaining of spare parts and forwarding to the port of repair,
- Superintendence of the repairs,
- Settlement of repair accounts,
- Salvage security,
- All General Average formalities, etc.

Actual out-of-pocket expenses incurred in making these various arrangements have always been claimable from Underwriters, but it has also been an established practice that the Owner (repeat, Owner) of a ship was not entitled to claim any remuneration for his own time and trouble on such affairs, whether as general or particular average.

The Association of Average Adjusters have a Rule of Practice No. A3 on the subject dating from 1906 and reading as follows:

AGENCY COMMISSION AND AGENCY

That, in practice, neither commission (excepting bank commission) nor any charge by way of agency or remuneration for trouble is allowed to the shipowner in average, except in respect of services rendered on behalf of cargo when such services are not involved in the contract of affreightment.

Over the years, however, and for various reasons, many ship-owners have formed separate companies to manage their ships for them – or have employed specialist ship managers – and these management companies have often put forward a separate fee for the extra work to which they were put in attending to the average matters listed earlier, plus their

work of collecting the necessary documents and presenting them for adjustment purposes. Whether such fees were permissible under the management contract is not known, but they were often claimed from and paid by hull underwriters.

Thus, over many years a practice has grown of allowing an agent or manager acting on the Assured's behalf to charge a fee for the work involved in compiling the Assured's claim for the Assured to recover this as part of the claim on policies of insurance on hull and machinery which is subject to English law and practice. There is probably no parallel in any other branch of insurance. However, as noted earlier, a ship-owner who manages his own ships and presents his own claims, cannot enjoy the privilege. This produces a result which can be termed anomalous and this anomaly is even more marked where the difference between the management company and the ship owning company is little more than a technicality.

At one time it was considered whether the charges should not be allowed to any management or agency company which was a subsidiary or in any way affiliated to the ship-owning company. In 1970, a Special Committee of the Association of Average Adjusters, which included representatives of Underwriters and Ship-owners, was appointed to consider the above-mentioned Rule of Practice in the light of modern conditions and make such recommendations as might be thought fit regarding its revision. After considerable consideration, a Report was issued on 22nd January 1971 wherein "it was unanimously agreed that the present Rule of Practice should remain unaltered and the Underwriters' Representatives would consult their principals for agreement that the present practice of allowing agency fees where these had been incurred in connection with the average be continued but reserving the right to question the quantum of such fees if considered unreasonable." Evidently, in practice Underwriters have continued to pay for the fees charged by vessel Owners' managers for the time spent handling damage claims, dealing with brokers, surveyors, lawyers, adjusters and others, if they appear to be reasonable.

A further point which needs stating is that it was often the management company which appointed the average adjuster and, human nature being what it is, it was sometimes difficult for the average adjuster to contain the fees proposed by the management company within reasonable bounds. Thus, allowance of large agency fees was not uncommon.

In 1983 the London market introduced a completely new set of Institute Clauses for the insurance of the hull and machinery of ocean-going (blue water) vessels to be used in conjunction with the new Marine Policy Form. Obviously, Underwriters seized the opportunity to exclude liability for remuneration in connection with a claim altogether, whether to a ship-owner or to a managing company. The wording they have chosen as follows (Clause 17 of ITC-83) does not seem to reflect their intention:

17 AGENCY COMMISSION

In no case shall any sum be allowed under this insurance either by way of remuneration of the Assured for time and trouble taken to obtain and supply information of documents or in respect of the commission or charges of an manager, agent, managing or agency company or the like, appointed by or on behalf of the Assured to perform such services.

A straight construction of these words means that fees payable to a management company for those services listed earlier in these comments may still continue to be claimed and paid. Indeed, by inference, perhaps, even a ship-owner operating his own ships should now be entitled to claim similar remuneration?

In practice, however, Underwriters have made it clear that their intention was to exclude all claims for remuneration by the Assured, their managers or agents for time and trouble incurred on any aspect of a claim. Accordingly, ship's proportion of agency fee allowable in general average would need to be deducted from the claim on policy of insurance subject to ITC – Hulls 1/10/83.

For the record, whilst it was blindingly obvious, without any form of explanation, that agency charges included in a port agent's general account covering expenses incurred in respect of the vessel thereat are not excluded by the terms of this Clause, to avoid the risk of having the settlement under the adjustment delayed, at one time, the following explanatory note, or similar, would appear in the adjustment:

"Adjusters' Note:

The fee charged in the above account represent charges of port agents for handling operations connected with the vessel at the port. Allowance therefor is not excluded by the terms of Clause 17 of the Institute Time Clauses – Hulls 1/10/83."

It is noted that the wording of Clause 17 of the ITC – Hulls 1/10/83 is the same as Clause 19 of the International Hull Clauses (01/11/03).

Understandably, it is not uncommon to see Ship-owners special clauses incorporated in the hull and machinery policies of insurance subject to ITC – Hulls 1/10/83 specifically delete the Clause 17, thus enabling the Assured to enjoy the pre-1983 practice mentioned earlier.

No equivalent provisions are to be found in the American Institute Hull Clauses but it is noted that in practice Underwriters in the American Market would not pay for any agency charge which was made by the Assured himself. For Underwriters to entertain payment, the charge would necessarily have to be made to the Assured – Owner by a managing agent or company.

UNREPAIRED DAMAGE

Section 69 (3) of the Marine Insurance Act 1906 provides that :

"Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage".

Until about 1950 there was a well-established practice in the London market for negotiating any claim for unrepaired damage. It was generally on the following lines:

1. Where the ship was sold, to endeavour to find out what price the purchaser of the vessel would have paid for her if the damage did not exist, subtract the actual price paid, and claim from Underwriters in respect of the difference – (always assuming that this difference was less than the cost of repairing the damage!)

2. Where the ship was not sold, to take the basic cost of repairs as estimated by Underwriters surveyor, generally to ignore dry-docking and other incidental charges, and to offer the Assured a figure less than this sum, the amount depending on the likelihood of whether or not the damage would eventually be repaired.

That is to say, prior to 1950 the settlement of claims for unrepaired damage was based on what the market considered to be the pure principle of Marine insurance, i.e. to INDEMNIFY the Assured for the actual amount he had lost – or was likely to lose – by reason of the unrepaired damage, and with the settlement based solely on the estimated cost of repairs and ignoring the insured value (other than as a limit on the amount payable).

There then followed a series of law cases in England and the U. S. A., including Elcock v.Thomson (1949), Irvin v. Hine (1949), the "Armar" (1954), and Delta Supply Co. v. Liberty Mutual (1963), and these cases introduced the Insured Value of the vessel into the calculation. Although never challenged by Underwriters in the Courts (e. g. see the "Medina Princess" – 1965), they regarded the introduction of the Insured Value into the calculation as something of an irrelevance, in the sense that any claim for repairs actually carried out was payable in full, regardless of whether the real value of the ship was over – or under – insured.

The position under the legal cases is best demonstrated by an extreme example where an elderly ship with a sound market value not much more than her scrap value sustains a serious damage, e. g.:

Estimated Cost of Repairs	-	600,000		
Sound Value			500,000	
Damaged (Scrap) Value			300,000	
		DEPRECIATION	200,000	= 40%

The Courts decided that this 40% Depreciation was to be applied to the Insured Value of the vessel and the legal claim on underwriters to be either:

a) The resultant figure, or

b) The estimated cost of repairs,

whichever was the less. For example:

	Insured Value	Depreciation 40%	Claim
(I)	400,000	160,000	160,000 (i.e. Depreciation)
(II)	1,000,000	400,000	400,000 (i.e. Depreciation)
(III)	2,000,000	800,000	600,000 (i.e. Repair Cost)

It will be appreciated that the real loss sustained by the assured as the result of the accident is only the difference between the sound and damaged values, - i.e. 200,000 - but as most ships tend to be insured for more than their real value, the general effect of the legal cases was to produce a much larger claim for the assured, i.e.:

	(II)	(III)
	400,000	600,000
and the assured was able to keep the ship or its proceeds	300,000	300,000
	700,000	900,000

The London market introduced a new clause in 1983 dealing with the vexed question of unrepaired damage; Clause 18 of the ITC-Hulls 1/10/83 reads as follows:

18. UNREPAIRED DAMAGE

18.1 The measure of indemnity in respect of claims for unrepaired damage shall be the reasonable depreciation in the market value of the Vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs.

18.2 In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.

18.3 The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.

Clause 18.1 overrides the effect of the legal cases and, to a large extent, re-introduces the pre-1950 practice mentioned earlier. The Insured Value will be ignored, other than as a limit on the amount of the claim.

Clause 18.2 is a restatement of the position under English as codified by Section 77(2) of the Marine Insurance Act 1906, which provides that :

"Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss"

The purpose of a marine insurance policy is to indemnify the Assured for losses which he sustains as the result of perils insured against and, in general, a ship-owner does not sustain any loss until he repairs the damage and incurs the cost of those repairs. It follows, therefore, that if the vessel becomes a total loss before an earlier damage has been repaired, the Assured loses nothing by reason of that earlier accident.

English law applies the principle that "the greater absorbs the lesser", and the subsequent total loss overrides and/or absorbs the earlier damage.

Even if the subsequent total loss is the result of some peril excluded – or not covered – by the policy, the same rule of "the greater absorbing the lesser" still applies, and there is no claim for the earlier partial loss left unrepaired - see the legal cases of Livie v. Janson (1810) and Wilson Shipping Co., Ltd. v. British and Foreign Marine Insurance Co., Ltd. (1919).

It should be noted that the above remarks apply only to situations where both the earlier partial loss and the subsequent total loss occur on the same policy.

As soon as a policy expires, the Assured has a legal right to claim from his Underwriters in respect of any damage sustained during the currency of that policy and which is presently unrepaired. The agreed insured value in the succeeding policy is assumed to take account of the fact that the vessel was then in a damaged

condition (even though the matter was probably not considered by Ship-owners or Underwriters at the time) and in the event of a total loss occurring on that following policy, the full insured value will be paid, while a claim for supposed depreciation will be paid on the earlier policy.

This point was covered in the interesting case of Lidgett v. Secretan (1871), where a vessel sustained damage during the currency of one policy and, while repairs were being carried out – but during the currency of a following policy – the vessel caught fire and was totally lost, The Underwriters of the first policy were held liable to pay the cost of the repairs actually completed at the time of the fire, plus a claim in respect of the unrepaired damage, while the Underwriters of the second policy were liable for a total loss and the full insured value. A very complete indemnity!

Clause 18.3, limiting claims to the insured value, was introduced to the ITC Hulls only in 1983 and relates to the equally new provisions in Clause 1.3 where the original insured value of the vessel may be reduced to some lower figure if the vessel sails for the purpose of being broken up.

Lines 117/119 of the American Institute Hull Clauses (June 2, 1977) reads as follows:

No claim for unrepaired damages shall be allowed, except to the extent that the aggregate damage caused by perils insured against during the period of the Policy and left unrepaired at the expiration of the Policy shall be demonstrated by the Assured to have diminished the actual market value of the Vessel on that date if undamaged by such perils.

The wording is quite different from the ITC Hull clause, but the effect of both is identical in that the judgements of the British and American courts have been set aside as commercial irrelevancies. To support a claim, the Assured must demonstrate that the damage left unrepaired when the policy expired has actually brought about a depreciation in the vessel's value. The AIHC do not state that the indemnity cannot exceed the estimated reasonable cost of repairs as do the ITC Hulls, but, of course, that is also the position in the American market.

The following self-explanatory wording is commonly seen under the Ship-owners Special Clauses incorporated in hull and machinery policies of insurance:

"Underwriters' liability in respect of unrepaired damage will be the estimated cost of repairs at the first reasonable opportunity including estimated dry-dock and services, tank cleaning, superintendence and removal, if necessary."

(Raymond T C Wong: Average Adjuster)

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