HONG KONG AND SINGAPORE PORTS: Challenges, Opportunities and Global Competitiveness

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Executive Summary

The traditional classification of Hong Kong and Singapore as established “hub port cities” is under threat. The Port of Hong Kong presently ranks as the third busiest container port in the world having dropped from first place in the years 1999 to 2004.

Competition from neighbouring Chinese ports is substantial. However, Singapore continues to pose a challenge for the Hong Kong maritime sector. Singapore is positioning itself to develop an entire “maritime cluster” of industries and services related to the shipping sector.

Aside from the environmental and security issues that both the Hong Kong and Singapore ports face, the regulatory framework of these comparator ports discloses some significant disparities which may present as opportunities to Hong Kong’s maritime industry.

Tax

Hong Kong and Singapore have favourable tax regimes. Singapore has enacted significantly more Double Taxation Agreements.

Ownership Structure

Hong Kong’s privatized port structure has been commended among the literature but Singapore’s placement of management and control in one broad oversight body has gained support.

Incentives

Put simply, Singapore has a broader range and greater number of financial incentives for the shipping industry. The incentives aim to cover the wider maritime services sector. A stronger focus on research and development is a core part of the strategy to encourage maritime businesses to the region. From June 2011 all incentives will be bracketed under a single Maritime Sector Incentive. CEPA provides an additional incentive to do business in Hong Kong.

International Cooperation

Singapore is cooperating with neighbouring ports to foster business opportunities for its maritime sector. Hong Kong is similarly cooperating with Shenzhen. Increasing opportunities for international cooperation may boost local maritime businesses as well as improve the perception of Hong Kong as a leading maritime centre.

A key component of Singapore’s strategy to promote itself as a leading International Maritime Centre involves a proactive approach to regulation and fiscal policies. The government aims to respond to the maritime sector through constantly reviewing and updating the tax regime, incentives and other regulations. There is little doubt that this strategy is being implemented.
1. Introduction

As entrepôt economies, both Singapore and Hong Kong depend upon the success of the local port and in particular, efficient transshipment capabilities. Developing global and regional factors mean that the traditional classification of Hong Kong and Singapore as established “hub port cities” is under threat. In terms of container throughput among the world’s busiest ports, Hong Kong has dropped from first in the years 1999 – 2004 to second in the years 2005 – 06, and presently ranks third behind Shanghai (the world’s busiest container port) and Singapore.1 This is despite annual container throughput to 2010 increasing by almost 13 per cent in Hong Kong and almost 10 per cent in Singapore.2 Overall Hong Kong ranks as the eighth most important maritime country or territory in the world.3 Undoubtedly Hong Kong’s economy could be adversely affected: “the ability of a nation to seize export opportunities and respond to imports is a major determinant of its national economic performance.”4

While the development of ports in Southern China and China’s strong growth rate since the 1990s are significant challenges for the port of Hong Kong, competition from Singapore is real and substantial.5 Singapore is positioning itself to develop an entire “maritime cluster” of industries and services related to the shipping sector. Additionally, Singapore’s port has faced and continues to face similar challenges as Hong Kong making it an important comparator port.

This working paper will first identify the key features of the ports of Hong Kong and Singapore. In order to identify disparities and opportunities, it will examine the regulatory framework of each, including incentives for the maritime industry.

2. Port Competitiveness

There is a substantial body of academic research concerning interaction between ports: predominantly in the fields of economics, management and transport logistics and geography. It is perhaps only through such a broad spectrum of analysis that the overall competitiveness of a port can be properly assessed – it is impossible to attribute the success or demise of a port to a single factor. Moreover, modern ports

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3 Heda Bayron, ‘Changing Tides’ (November 2010) A Plus: Shipping 14. Hong Kong ranks behind Japan, Greece, Germany, China, Norway, Korea and the US.


5 In terms of container throughput figures for 2005-09, Singapore ranked first in the world and until being taken over by Shanghai, had ranked as the world’s busiest port consistently since 1986: Wong Joon San, above n 1.
are a complex agglomeration of stakeholders including terminal operators, regulatory bodies, logistics companies, shipping lines, and many more. Although it is the intention that the present working paper focus on two specific aspects of maritime competitiveness, namely governmental regulation and policies, the wealth of discourse on port competition and integration is instructive and reference will be made where relevant.⁶

3. Some Historical and Geographical Considerations

Hong Kong’s port lies in a sheltered natural harbour and is located along the Far East trade routes. Since the 1970s and China’s opening to foreign trade and investment, Hong Kong has served as the gateway to mainland China and, partly as a consequence of its proximity to the hinterland, has been the leading container port in the world for a number of years. Even today China accounts for almost half of Hong Kong’s imports and exports.⁷ Various authors attempt to identify contributing factors to the port of Hong Kong’s success. The consensus appears to be its unique geographical position,⁸ regulatory environment, and infrastructure. Without doubt, the port exemplifies the successful integration between inland and maritime transport networks.

Hong Kong’s traditionally burgeoning manufacturing sector moved northward into China when the Chinese government established a special economic zone in 1979 in Shenzhen. Initially the Hong Kong port flourished but in the past two decades growth momentum has slowed.⁹ Wang and Cheng note that despite Hong Kong’s world-class facilities, the challenge to its ocean and air cargo terminals comes from the ‘rapidly growing container and air cargo terminals in South China’.¹⁰ Hong Kong is an established, mature port and any comment as to growth must take account of this.

Singapore’s establishment as a key transshipment hub in Asia has been aptly described as a ‘product of imperialism’.¹¹ The Straits of Malacca and Singapore have been the object of international attention and rivalry since as early as the 15ᵗʰ Century.¹² Though historically its trade was largely Asian in nature, modern Singapore is known as the world’s most important intermediate hub.¹³ Its location

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⁶ Economic and transport geographical issues are considered at depth across the literature and readers may consider consulting Theo Notteboom, Cesar Ducruet and Peter de Langen (eds), *Ports in Proximity* (Ashgate, 2009) as an informative starting point.
⁸ As Wang notes, it ‘plays a vital role as the entrepôt for container transshipment for both Asia/North America and Asia/Europe traffic lines’: Wang, above n 4, 26.
¹⁰ Ibid 111.
¹² For an instructive article examining the strategic importance of the Straits, see Chia Lin Sien, ‘The importance of the Straits of Malacca and Singapore’ (1998) 2 *Singapore Journal of International and Comparative Law* 301.
¹³ Jean-Paul Rodrigue, ‘Maritime Transportation: Drivers for the Shipping and Port Industries’ (Paper presented at the International Transport Forum, Paris, 26 January 2010), 10. According to Rodrigue, intermediate hubs have developed as a result of the growth of long distance containerized trade.
like Hong Kong is critical: there are over 60,000 ship movements in the Singapore Straits annually. \(^\text{14}\) Approximately half (49 per cent) of Singapore’s exports were attributable to the re-export trade (transhipment) in 2009. \(^\text{15}\) In comparison, just over half (53 per cent) of Hong Kong’s cargo throughput was transshipped. \(^\text{16}\) Singapore’s success has been attributed to its strategic location, infrastructure, and the efficiency and quality of port services. \(^\text{17}\)

Singapore has faced intense competition from ports in Malaysia, specifically the port of Tanjung Pelepas in Johor (PTP). In August 2000, Maersk announced that it would move transshipment operations from Singapore to Tanjung Pelepas; the ‘biggest single move in the history of the port industry in Southeast Asia.’ \(^\text{18}\) Maersk accounted for almost 10 per cent of Singapore’s container volume. Soon after, in 2002, Evergreen Marine Corporation announced plans to move its transshipment operations because of lower container handling charges in the PTP (it was estimated that costs were 30 to 40 per cent lower). The PTP is a short diversion from the main Malacca route and with its focus on transshipment services may continue to be a principal competitor of Singapore. \(^\text{19}\)

Both Hong Kong and Singapore have reacted to the challenges of modern globalization and the rise of China. Cullinane and Weng best describe the present state of affairs: \(^\text{20}\)

One distinctive feature of the contemporary container port industry is that competition between container ports is more intensive than has previously been the case. Port markets used to be perceived as monopolistic due to the exclusive and immovable geographical location of the port and the unavoidable concentration of port traffic. However, the rapid development of international container and intermodal transportation has drastically changed the market structure from one of monopoly to one where fierce competition is rampant in many parts of the world. Many container ports no longer enjoy the freedom yielded by a monopoly over the handling of cargoes from within their hinterland. Instead, they have to compete for cargo with their neighbouring ports.

\(^\text{17}\) J Tongzon, ‘Key Success Factors for Transshipment Hubs: The Case of the Port of Singapore’ (Paper presented at IAME Annual Conference, Hong Kong, 2001). Further information is provided in Jose Tongzon, ‘Key Success Factors for Transshipment Hubs: The Case of the Port of Singapore’ in Tae-Woo Lee and Kevin Cullinane (eds), World Shipping and Port Development (Palgrave MacMillan, 2005) 162.
\(^\text{18}\) Anton Kleywegt and Mee Leng Goh, ‘Competition between the Ports of Singapore and Malaysia’ (4 April 2002, The Logistics Institute).
4. Maritime Law and International Conventions

Hong Kong and Singapore maritime law is based on English law; each has enacted legislation and regulation covering the breadth of the shipping industry.

4.1 Environment

Environmental issues are far reaching and critical to the maritime industry. This section provides an overview of some of the current issues.

Hong Kong and Singapore are parties to the Convention on the International Maritime Organisation 1948. It may be of interest to note that Singapore is not a signatory to a number of significant conventions: the International Convention for Safe Containers, the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, the International Convention on Salvage, and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, and the 1996 Protocol to the latter convention (‘London Protocol’). Beckman points out that ‘Singapore may be concerned with how the 1996 Protocol will impact the regular dredging of its port waters and shipping channels, and its use of dredging spoils for land reclamation.’ That protocol’s implementation in Hong Kong is subject to ratification by China.

Notwithstanding this, Singapore has made serious efforts to control pollution in the Straits. For example, ‘Singapore is the only State in Southeast Asia that is a party to all six annexes to the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto (MARPOL).’ It imposes harsh penalties for breaches of pollution regulations. In March 2010, Singapore acceded to the International Convention on the Control of Harmful Anti-

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27 Beckman, above n 14, 172.
Fouling Systems on Ships.\textsuperscript{31} China’s accession to the Convention extends it to the Macau Special Administrative Region but not to Hong Kong. Despite this, the Hong Kong Marine Environment Protection Committee adopted the Convention’s Guidelines for inspection of anti-fouling systems on ships in 2007.\textsuperscript{32}

Hong Kong has not adopted the Protocol on Preparedness, Response and Co-operation to Pollution (OPRC) Incidents by Hazardous and Noxious Substances 2000 (HNS).\textsuperscript{33} It is, however, a party to the earlier OPRC Convention of 1990.\textsuperscript{34} The Protocol extends the requirements concerning pollution incidents to hazardous noxious substances other than oil. In February 2010, Hong Kong enacted legislation to implement the Bunkers Convention.\textsuperscript{35}

Hong Kong has instituted a number of measures to mitigate the occurrence of marine pollution including Vessel Traffic Service (VTS) radar surveillance and tracking, and a Maritime Oil Spill Response Plan. A Regional Plan has been prepared by port authorities from Guangdong, Guangzhou, Macau, Shenzhen, Zhuhai and Hong Kong which is directed to dealing with oil spills in the Pearl River Delta. The Hong Kong Marine Department’s Pollution Control Unit is primarily responsible for prevention and clean-up operations.

Hong Kong is working to curb the greenhouse gases and pollutants emitted from ships. According to the second International Maritime Organisation (IMO) Greenhouse Gas (GHG) Study in 2009, international shipping was estimated to have contributed 2.7 per cent of global man-made emissions of carbon dioxide in 2007.\textsuperscript{36} A number of options are still being debated by the IMO. The Hong Kong Shipowners’ Association has expressed a preference for a levy on bunkers as opposed to an emissions trading scheme.\textsuperscript{37} The Association is also active in reducing air pollution but concedes that a switch to low sulphur fuel may put local operators at a competitive disadvantage. A 2008 report by the Civic Exchange examined polluting emissions from ships and port-related activities in the Pearl River Delta.\textsuperscript{38} It provided a number of suggestions for reducing pollution in the region including a comprehensive “green ports” strategy, training and further research.

Under regulations made pursuant to the Prevention of Pollution of the Sea Act, Singapore’s Maritime and Port Authority (MPA) can call upon the resources of oil

\textsuperscript{31} International Convention on the Control of Harmful Anti-Fouling Systems on Ships, opened for signature 5 October 2001, AFS/CONF/26 (entered into force 17 September 2008). Hong Kong has not yet adopted this Convention.

\textsuperscript{32} See Marine Department of Hong Kong, Merchant Shipping Information Notice 39/2007 (24 October 2007).


\textsuperscript{34} International Convention on Oil Pollution Preparedness, Response and Cooperation, opened for signature 30 November 1990, 1891 UNTS 78 (entered into force 13 May 1995).


\textsuperscript{36} International Maritime Organisation, ‘Second IMO GHG Study 2009’ (London, April 2009).

\textsuperscript{37} Hong Kong Shipowners’ Association, ‘Year Book 2009-2010’ (Hong Kong, 2010) 19.

\textsuperscript{38} Veronica Galbraith, Lynne Curry and Christine Loh, ‘Green Harbours: Hong Kong and Shenzhen’ (Civic Exchange Report, June 2008).
companies and private enterprises to assist with an oil spill. An Oil Spill Contingency Plan is in place in addition to a Marine Emergency Action Procedure (a Chemical Contingency Plan exists to deal with HNS). Interestingly, the Singapore Oil Spill Response Centre is a private oil spill clean-up organization.

A recurring problem in the Straits is the differing interests of littoral States and the inconsistency in adoption and implementation of international conventions. The body of technical experts from Indonesia, Malaysia and Singapore is known as the Tripartite Technical Experts Group (TTEG). The TTEG operates as a forum for the exchange of ideas on safety of navigation and marine environmental protection issues on the Straits of Malacca and Singapore. Other attempts toward regional cooperation include the 2005 Batam Joint Ministerial Statement and IMO-sponsored meetings involving the littoral States. Some positive results have been reported from the cooperative arrangements.

4.2 Security

Singapore arguably has a greater responsibility to ensure security of vessels transiting the Singapore and Malacca Straits than Hong Kong does in its region. Most countries in the region recognise the importance of a regional approach to maritime security, specifically piracy. Hong Kong, through China’s accession, is a party to the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which came into force in 2006. The Information Sharing Centre (ISC) under the ReCAAP is based in Singapore. Although the practical consequences of ReCAAP are varied and yet to be fully analysed, the consensus is that cooperation is necessary and must continue. ReCAAP is discussed further below.

The importance of the Straits, particularly to world oil trade, necessitates a comprehensive approach to security. Singapore has engaged in local agreements such as the “Batam Joint Statement of the 4th Tripartite Ministerial Meeting of the Littoral States on the Straits of Malacca and Singapore” following a regional meeting in 2005. Singapore is also engaged in international endeavours to control piracy in the Gulf of Aden. Since 2003, the country’s Maritime and Port Security Working Group has had an active role in implementing port and shipping security regulations. As noted above, the TTEG acts as a forum for the exchange of views on security and the

41 More information can be found at <http://www.tteg-indonesia.com/>.
42 Outlined below.
44 See generally Beckman, above n 14, 167.
marine environment. Ultimately, continuing (successful) efforts to protect the Straits may have a positive impact on the perception of Singapore as a leading maritime centre.  

4.3 Other Issues

The International Labour Organisation expects the Maritime Labour Convention (MLC) will enter into force in the next year. It deals with seafarers’ rights and conditions of work and aims to strike a balance between their needs and the economic interests of shipowners. It will supersede 37 international labour conventions. Hong Kong is preparing to implement the convention but is not yet a signatory. It is unclear whether Singapore will ratify but its large register, like that of Hong Kong, necessitates that it assist the industry in compliance.

5. Regulatory Framework

5.1 Hong Kong Port

Hong Kong’s Shipping and Port Control Ordinance permits privatization throughout the port. All container terminals are privately owned and operated.

The Marine Department of Hong Kong is responsible for the day-to-day operation of the port and the Transport and Housing Bureau of the HKSAR Government is the policy bureau responsible for port policies and related development. The Port Development Council (PDC; previously the Port Development Board) is a high-level non-statutory advisory body which advises the Government on port planning and coordinates government and private sector involvement in the development of new facilities. It is chaired by the Secretary for Transport and Housing and its members are drawn from the industry and other relevant government departments. The Hong Kong Maritime Industry Council (MIC), another high-level advisory body comprising of private sector and public officials, focuses on the development and promotion of the maritime industry. It too is chaired by the Secretary for Transport and Housing.

The ownership structure of Hong Kong’s container terminals has been described as a ‘three-tiered hierarchy’ whereby the Government of the HKSAR oversees the Marine

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47 Basing the Information Sharing Centre under ReCAAP in Singapore is a start.
48 At present only 12 countries have ratified: Bahamas, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Liberia, Marshall Islands, Norway, Panama, Saint Vincent and the Grenadines, Spain, and Switzerland. To come into force, it must be ratified by at least 20 Member States with a total share in the world gross tonnage of ships of 33 per cent: see <www.ilo.org/mlc>.
49 For example, see B G (N S) Tay Lim Heng, Chief Executive, MPA Singapore (Speech delivered at the 9th Maritime Forum, Singapore, 12 February 2007); Hong Kong Shipowners’ Association, above n 37, 23-4.
50 Shipping and Port Control Ordinance (Hong Kong) cap 313.
Department, with the PDC constituting a further layer of control.\(^52\) As the competitiveness of Hong Kong’s maritime sector comes into clearer focus, the MIC’s role will no doubt be critical in promoting and developing the port and supporting services. It should be noted, however, that generally neither the Port Development Council nor the Maritime Industry Council are regarded as having a “controlling” role.

### 5.1.1 Tax

Hong Kong has a favourable regulatory environment for businesses. It has a low tax rates on corporate profits (16.5 per cent), no capital gains tax, no interest tax, no sales tax, no value-added tax, no withholding tax on service fees or interest payments, and income generated outside Hong Kong is not taxable. Relevantly, it has or is presently negotiating 22 Double Taxation Relief Agreements with various countries.\(^53\) These bilateral agreements have been negotiated for the avoidance of double taxation covering more than just shipping income; some are comprehensive arrangements which extend to all sources of income. It has six DTAs relating specifically to shipping income and a further two relating to both airline and shipping income.

Section 23B of the *Inland Revenue Ordinance* provides a formula for assessing the profits of shipping companies.\(^54\) This effectively operates as a separate regime for assessing the profits of Hong Kong shipowners and even extends to businesses, not managed locally, with ships that call at a location within the waters of Hong Kong. If the ship is registered in Hong Kong, uplifts its cargo in Hong Kong and is navigating to international waters the income will be exempt.\(^55\) This is commonly referred to as the exemption for the ‘international operation of Hong Kong registered ships’.

### 5.1.2 Registration

Since 2006 the Marine Department has operated an annual tonnage charge (ATC) reduction scheme for Hong Kong registered ships. This is to ‘encourage a long term and stable registration under the Hong Kong Shipping Register (HKSR) and to promote the HKSR as a quality shipping register’.\(^56\) It is governed by the *Merchant Shipping (Registration) (Fees and Charges) Regulation*.\(^57\) For every two years that a ship is continuously registered with the HKSR, and provided it has no detention record under any Port State control regime under the period, the registered owner will receive a six-month ATC reduction in the following year. Hong Kong registered ships also enjoy preferential rates of port charges when calling at Chinese ports\(^58\) and there is no nationality restriction on manning vessels.

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52 Dong-Wook Song, ‘Regional container port competition and co-operation: the case of Hong Kong and South China’ (2002) *Journal of Transport Geography* 99, 103-4. The Development Board is not a governmental authority.

53 Further information is available from the Inland Revenue Department, accessible at <http://www.ird.gov.hk/eng/tax/dta_inc.htm>.

54 *Inland Revenue Ordinance* (Hong Kong) cap 112.

55 See *Inland Revenue Ordinance* (Hong Kong) cap 112, s 23B.


57 Cap 415, r 4.

58 They have enjoyed up to 29 per cent preferential port dues in mainland China since 2000: Marine Department of Hong Kong, Merchant Shipping Information Note 2/2000. The Marine Department
5.1.3 Incentives

Hong Kong boasts a Closer Economic Partnership Agreement (CEPA) with the mainland designed to improve trade and business integration. Article 1 sets out the objectives:

- To strengthen trade and investment cooperation between the Mainland and Hong Kong and promote joint development of the two sides, through the implementation of the following measures:
  1. progressively reducing or eliminating tariff and non-tariff barriers on substantially all the trade in goods between the two sides;
  2. progressively achieving liberalization of trade in services through reduction or elimination of substantially all discriminatory measures;
  3. promoting trade and investment facilitation.

The agreement encourages businesses in Hong Kong to develop close business relationships with the mainland. It has resulted in greater integration and openness among the economies of the Greater Pearl River Delta region.

Various supplements to the original CEPA have affected the maritime sector:

- CEPA Supplement IV, effective January 2008, permits Hong Kong service suppliers to set up joint venture enterprises in the Mainland to provide third party international shipping agency services, of which the Hong Kong service suppliers’ shareholding should not exceed 51 per cent. Local service suppliers can set up joint venture activities on the mainland to provide third party international shipping agency services. ‘This lowers the barrier of the third party international shipping agency services for Hong Kong service suppliers, as compared to other foreign joint-ventures outside CEPA.’
- CEPA Supplement V, effective January 2009, allows Hong Kong service suppliers to set up wholly-owned enterprises and their branches in Guangdong Province to provide shipping agency services to vessel operators for routes between Guangdong Province and Hong Kong and Macau.
- CEPA Supplement VI, effective October 2009, allows Hong Kong service suppliers to set up wholly-owned shipping companies in the Mainland to provide regular business services such as shipping undertaking, issuance of bills of lading, settlement of freight rates, and signing of service contracts for shipping transport between Hong Kong and the Class B ports in Guangdong operated by the Hong Kong service suppliers using chartered Mainland vessels.

Recently, the Hong Kong Marine Department announced reductions in 24 marine-related fees. Port facilities and light dues will be reduced by approximately 20 per cent for ocean-going vessels. Fees for seafarers’ licenses and certificates will also be

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59 The main text and six annexes were signed on 29 June 2003 and 29 September 2003 respectively. The WTO was notified of CEPA on 27 December 2003. Note that CEPA was signed in the Chinese language only. A number of supplements to the main text have been signed.
60 Invest Hong Kong, above n 51.
5.1.4 Challenges

The burden upon road and rail systems as a result of increased vessel movements and capacity is a major concern for ports. In terms of port inefficiencies, a McKinsey and Company report identified: ‘the key to restoring Hong Kong’s competitiveness lies in addressing the logistics of getting goods to port, not the operation of the port itself.’ However, the report noted that:

Despite the cost advantage of southern China’s ports, Hong Kong retains its appeal for certain shippers, who say that they value the port’s easier customs clearance, which involves fewer inspections and more consistent demands for documentation … Moreover, Hong Kong’s status as a duty-free port makes it attractive as a regional warehouse for high-value goods, while its sophisticated legal and financial systems facilitate trade.

5.2 Singapore Port

On 2 February 1996, the functions performed by Singapore’s National Maritime Board, Marine Department and the regulatory departments of the Port of Singapore Authority were transferred to the control of the Maritime and Port Authority of Singapore (MPA). The MPA is a statutory board which operates under the Ministry of Transport. Reports suggest that the concentration of services in the one authority has benefited the port with more maritime companies expected to relocate head offices to Singapore.

Singapore’s terminals are managed by two commercial port operators: PSA Corporation, which handles most container shipping; and Jurong Port, which controls the main bulk and conventional cargo terminal.

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62 Amendments have been made to the regulations by the Shipping and Port Control (Amendment) Regulation 2011 and the Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2011.
63 Marine Department: Planning, Development and Port Security Branch, ‘Port benchmarking for assessing Hong Kong’s maritime services and associated costs with other major international ports’ (Report, December 2006) 42.
64 See, eg, Rodrigue, above n 13, 11-12.
66 Much of the information contained in the following sections (especially 5.2.3 [Incentives]) is attributable to the Maritime and Port Authority of Singapore (MPA), accessible at <http://www.mpa.gov.sg>.
67 See Maritime and Port Authority of Singapore Act (Singapore, cap 170A, 1997 rev ed).
5.2.1 Tax

Singapore has attractive tax incentives for the shipping industry. Only income sourced in Singapore or received in Singapore from outside is taxable and there is no capital gains tax. The head corporate tax rate is presently 17 per cent (though this is largely irrelevant for shipping companies taking advantage of the various incentives available). Double taxation agreements (DTAs) have been signed with 64 countries and limited double taxation agreements are in place with a further seven countries. A further 13 have been signed but not yet ratified. Singapore clearly surpasses Hong Kong in the number of DTAs in place and it has been said that the lack of DTAs ‘diminishes [the port of Hong Kong’s] competitiveness’.70

The Income Tax Act exempts ‘the income of a shipping enterprise derived or deemed to be derived from the operation of Singapore ships or foreign ships...’71 As of 22 February 2010, this has included income derived by the shipping enterprise from the provision of ship management services to any qualifying company (that is, a company at least 50 per cent owned by the shipping enterprise) in respect of Singapore ships owned or operated by the qualifying company.72 In contrast to Hong Kong, the exemption extends to foreign flagged vessels.

5.2.2 Registration

From a registration perspective, Singapore ships do not appear to enjoy the same preferential treatment at Chinese ports as do those registered in Hong Kong. Nevertheless, the Singapore registry ranks among the top ten largest registries in the world. There is no nationality requirement on manning a vessel and the country recognizes foreign certificates of competency. Shipowners that transfer registration of a fleet to Singapore receive discounted registration fees.73

5.2.3 Incentives

A number of the incentives outlined below are granted flexibly, meaning they do not automatically apply and are granted following assessment by the relevant administering authority.

Singapore has created five free trade zones to facilitate the handling of transshipment cargo. Under the Free Trade Zones Act, goods in a free trade zone may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed, or otherwise manipulated, or manufactured in accordance with the Act.74 Most importantly for transshipment purposes, these zones enable goods to be stored free of charge and with minimal customs formalities.75

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69 See further the discussion under 5.2.3.
70 Bayron, above n 3, 17.
71 Income Tax Act (Singapore, cap 141, 1985 rev ed) s 13A(1). Dividends paid out of any such income are also exempt: s 13A(6)(f).
72 Income Tax Act (Singapore, cap 141, 1985 rev ed) s 13A(1C).
73 The Block Transfer Scheme (BTS) discount means that the maximum registration fee is capped at S$20,000 (as opposed to a S$50,000 maximum outside the BTS).
74 Free Trade Zones Act (Singapore, cap 114, 1985 rev ed) s 5(2).
75 For further information see Deloitte Consulting Services, ‘Free Trade Zone Study’ (October 2008) 39-40.
The Approved International Shipping (AIS) Enterprise incentive was introduced in 1991 and is a reasonably flexible scheme whereby shipping companies may be exempted from taxes. The exemption is granted on a ‘case-by-case basis to qualifying shipping companies for an initial period of ten years’ and is renewable. Flexible rules enable companies to take advantage of the incentive even if the Singapore incorporated company does not own the vessels. As at 2005 there were 68 approved AIS companies and the scheme has been expanded since its inception. Although Hong Kong has similar exemptions, Singapore’s extend to foreign flagged vessels.

An Approved Shipping Logistics (ASL) scheme operates to grant eligible companies a concessionary tax rate of not less than 10 per cent on incremental income derived from providing freight and logistics services. It is directed toward encouraging ship agencies, ship managers, international logistics operators and freight forwarders of shipping groups to base logistics and freight services in Singapore.

Businesses involved in ship or container leasing may receive tax concessions for up to five years on certain income under the Maritime Finance Incentive (MFI) scheme. Interested companies must present a business plan and demonstrate a commitment to expanding shipping and container financing operations in Singapore. The Income Tax Act also allows a deduction for certain logistics expenses by a company, subject to conditions such as approval by the Minister. Ship brokers and companies engaged in forward freight agreement trading are eligible for a concessionary tax rate: again, certain eligibility criteria must be met for the five year concession to be applied.

Singapore’s Maritime Cluster Fund (MCF) is accessible to various industry groups within the maritime sector. For example, financial assistance for the training and capability development of staff; business development for start-up companies or those intending to expand; and supported sectors such as shipowners and operators, ship management, financing and brokering, maritime law, port management, and maritime insurance.

Singapore’s incentives, like Hong Kong’s, extend to simple reductions in fees. For instance it introduced a 20 per cent concession for port fees in 1995 and this has been extended to mid-2012.

From 1 June 2011, all existing incentives for the maritime sector will be consolidated under the Maritime Sector Incentive (MSI). The incentives will be bracketed under three separate categories. First, the International Shipping Operations category will retain incentives attracting ship operators to Singapore and will promote the Singapore Ship Registry. Changes will be made enabling certain companies to receive automatic withholding tax exemptions. Furthermore, a new tax exemption scheme will focus upon small ship operators commencing operations in Singapore. Secondly, the Maritime (Ship or Container) Leasing category aims to promote ship and container financing. The incentives presently under the MFI scheme will transfer to this category. Finally, the Supporting Shipping Services category will house the

78 Income Tax Act (Singapore, cap 141, 1985 rev ed) s 14C.
existing ASL and FFA trading incentives. A new five-year incentive will give qualifying shipping support services a 10 per cent concessory tax rate on qualifying income. The category focuses on ship management, agency, freight and logistics services as well as ship broking and some corporate services. 79

In addition to the above amendments, a new GST scheme will permit “approved marine customers” to buy or rent goods for use or installation on a commercial ship (that is wholly for international travel) GST-free.

Since 2009, Singapore has invested in programs to develop a research and development focus within the maritime industry and academic institutions. The goal is to be a “global maritime knowledge hub” by 2025. The Maritime Cluster Fund offers financial assistance for training and a Maritime Innovation and Technology (MINT) fund has been set up to provide funding for information technology, engineering, science, and various research and development programs. 80

5.2.4 International Cooperation

As recently as 2010, the MPA signed a memorandum of understanding (MOU) with Dubai Maritime City Authority and the Ministry of Land, Transport and Maritime Affairs, Korea. Key areas of focus in the Dubai agreement include “promoting maritime environmental protection as well as conducting maritime training and research.” 81 The MOU places Singapore in a unique position in fostering relations with Middle Eastern countries. The Korean agreement concentrates on the safety of navigation and protection of the marine environment. It also aims to develop a cooperative approach to the International Maritime Organisation (IMO), the ReCAAP and the Cooperative Mechanisms for Safety of Navigation and Environmental Protection in the Straits of Malacca and Singapore.

Agreements which have been in place for a number of years include a maritime and training-based MOU with Indonesia, and a cooperative development agreement with Vietnam. Singapore sees itself as an ‘active participant’ in the growth of ports and the maritime sector in Vietnam: the MPA aims to provide its expertise in best practices and port infrastructure know-how in developing Vietnam’s ports.

5.3 Arbitration

Hong Kong and Singapore appear to be positioning to take advantage of the opportunities associated with maritime law services, in particular, arbitration. Each jurisdiction has established specific maritime arbitration bodies: in Hong Kong, a Maritime Arbitration Group under the Hong Kong International Arbitration Centre; and in Singapore, the Singapore Chamber of Maritime Arbitration within the Singapore International Arbitration Centre.

79 More information is expected to be released by the MPA in May 2011.
80 Industry groups have supported the move with many offering scholarships such as the Association of Singapore Marine Industries which offers a number of marine scholarships.
The New York Convention has application to Hong Kong by virtue of the United Kingdom’s accession in 1977 and later by China’s application of it to Hong Kong in 1997. Singapore acceded to the Convention in 1986.\(^{82}\)

### 5.3.1 Hong Kong International Arbitration Centre (HKIAC)

The HKIAC focuses on various methods of alternative dispute resolution including arbitration. In 2000, the Centre established the Hong Kong Maritime Arbitration Group (HKMAG) in response to growing demand from the shipping industry.\(^{83}\) A register of experienced maritime arbitrators is maintained by the group.

A new Arbitration Ordinance was passed by the Legislative Council on 11 November 2010. The Ordinance follows the UNCITRAL Model Law and applies to all arbitrations.\(^{84}\) It now incorporates: more detailed costs and taxation provisions with an aim to reducing the costs of arbitration; reduced judicial intervention; codification of the obligation to keep the proceedings and award confidential; and a mechanism for enabling an arbitrator to act as mediator after arbitral proceedings have commenced.\(^{85}\) The new ordinance retains the flexibility of having a hearing by “documents only” for smaller claims; which is generally more efficient and economical than traditional oral hearings. This procedure also incorporates maximum recoverable limits for arbitrators’ fees and lawyers’ costs.

### 5.3.2 Singapore International Arbitration Centre (SIAC)

The Singapore Chamber of Maritime Arbitration (SCMA) was originally established in 2004 under SIAC but from 2009 has been a separate entity. The separation coincided with a change in the rules which emphasise flexibility and maximum choice for parties. If the juridical seat of arbitration is Singapore, it will be governed by the *International Arbitration Act*.\(^{86}\) Under that Act, the Model Law (except Chapter VIII) has the force of law. Singapore decided to retain a domestic arbitration regime under the *Arbitration Act* so that the ‘courts could continue to exercise a greater degree of supervision over domestic arbitrations.’\(^{87}\) The major difference, as Chan points out, is the right of appeal from an arbitral award. There is no right of appeal under the *International Arbitration Act* but the *Arbitration Act* permits an appeal on a question of law, with the leave of the court.\(^{88}\)

The SCMA has a similar procedure to the HKMAG for minor disputes: the arbitration will typically be dealt with on the papers and maximum limits for arbitrators’ fees and lawyers’ recoverable costs apply.

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\(^{82}\) *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, opened for signature 10 June 1958, 330 UNTS 3 (entered into force 7 June 1959) (‘New York Convention’).

\(^{83}\) Approximately 900 shipping companies operate in Hong Kong.

\(^{84}\) Previously there was a distinction between domestic and international arbitrations.

\(^{85}\) *Arbitration Ordinance* (Hong Kong) cap 609 (expected to come into force in mid-2011).


\(^{88}\) Ibid 2.
6. Implications and Inferences

6.1 Comparisons

The ports of Hong Kong and Singapore as major container transshipment hubs have been studied extensively. The first vital point to note is the location of each port: Hong Kong has traditionally served as a gateway to China; Singapore has always been a classic transshipment hub. Maritime traffic in the Malacca and Singapore Straits is growing, especially as Asian nations demand for oil improves.\(^9^9\) Despite this growth, Singapore faces enormous challenges from rising ports on the Malay Peninsula such as the PTP. The country’s desire to fast-track its development as a consequence of such competition could account for the decision not to sign certain international conventions.

Singapore must also work to combat the problem of maritime piracy in the region. But this commitment is a regional one and given the reliance on the Straits (diversion does not appear to be an economically feasible option), it appears to be a risk that most shippers will take at this stage. Both countries are heavily involved in ReCAAP which has had documented success. Hong Kong’s Marine Department is working to ensure the safety of its vessels in the Gulf of Aden and may consider taking a broader role on behalf of Asian nations in the fight against piracy in that region.\(^9^0\) China’s increasingly robust contribution to fighting piracy in the Gulf could provide a starting point for boosting Hong Kong’s involvement.

The ownership structure at the comparator ports is different. Hong Kong encourages vast private ownership and operation whereas Singapore has placed management within the control of two commercial port operators. Hong Kong’s three tiered organizational structure, while recognized for its support for private enterprise, has not attracted the same support among the literature as Singapore’s MPA, which concentrates oversight of the port in one body.

Both jurisdictions have favourable tax regimes and have proactively sought bilateral double tax agreements to foster investment and growth. Crucially though, Singapore has over twice the number of DTAs as Hong Kong.\(^9^1\) It is common ground among industry experts that Singapore’s extensive range of DTAs makes it much more attractive than Hong Kong.

In terms of registration, that Hong Kong registered ships enjoy favourable rates at Chinese ports should be important; however, Singapore has one of the largest registries in the world. No doubt its discounts for registration have assisted, as well as the preponderance of oil tankers registering there. Hong Kong has embarked on a

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\(^{90}\) For example, the Marine Department has published a number of Security and Quality Advisories outlining recommended measures to combating piracy. The Hong Kong Shipowners’ Association has voiced its concern over the safety of seafarers and the inadequacy of current measures in the Gulf of Aden.

\(^{91}\) By comparison, China has 98. See Bayron, above n 3, 17.
program of reducing maritime fees since a report in 2006 highlighted competition from similar-sized ports.\(^{92}\)

Singapore appears to have a broader range and greater number of incentives on offer to the shipping industry. Reports tend to support the evidence: ‘With the incentives, Singapore has surpassed Hong Kong which offers only a few attractions.’\(^{93}\) Singapore’s incentives cover an array of shipping-based sectors and many introduced up to two decades ago have been extended. The consolidation of incentives under a single Maritime Sector Incentive from mid-2011 will further Singapore’s ambition to entice maritime businesses. It is also actively pursuing cooperative arrangements with neighbours and countries further afield in areas of port development, and maritime training and research. It is possible that Singapore, in view of the competition from Malaysia’s PTP, has engaged in these cooperative measures in order to keep abreast of regional ports and the competition posed. CEPA is one major advantage for businesses operating in Hong Kong; the scheme specifically targets some areas of the maritime sector and highlights Hong Kong’s integral relationship with the mainland.

Hong Kong’s recently updated Arbitration Ordinance modernizes and streamlines the arbitral process. It is too early to say if significant gains will be made in the maritime law sector. However, Singapore’s similar regime demonstrates that a full complement of legal services and institutions is necessary to enhance maritime services overall.

6.2 Possible Opportunities for Hong Kong

Hong Kong may consider engaging with foreign jurisdictions in the development of further DTAs. While the Inland Revenue Department is confident that Hong Kong’s taxation regime avoids double taxation, it recognizes that DTAs provide certainty to investors and allows them to better assess potential tax liabilities, and provides an additional incentive to do business in Hong Kong.\(^{94}\)

Cooperating with neighbouring ports allows Singapore to better understand its competitors and provides business opportunities for the wider maritime sector. Hong Kong has formally cooperated with Shenzhen since 2004 with the signing of a Memorandum of Closer Cooperation. Efforts to increase cooperation may open up opportunities for the local maritime sector.

There is little doubt that the incentives offered by the Singaporean government outnumber those offered in Hong Kong. A key point to note is the transparency and publicity enjoyed by the MPA of Singapore: this greatly enhances the perception of the country as a “maritime centre”. The mere classification of a broader tax incentive

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\(^{92}\) Marine Department: Planning, Development and Port Security Branch, ‘Port benchmarking for assessing Hong Kong’s maritime services and associated costs with other major international ports’ (Report, December 2006).


as a “maritime tax incentive” may assist in promoting Singapore’s attractiveness to the sector. Overall the range of incentives and financial grants do appear to be working. Additionally, the new, stronger focus on research and development in the maritime industry places the country in a unique position to attract leading experts and foster a new generation of maritime professionals. Further promotion of CEPA and integration of maritime incentives into the agreement may help to promote Hong Kong as the leading market-entry point for China.

Hong Kong may learn from Singapore’s three-pronged strategy to promote itself as a leading International Maritime Centre. The strategy involves attracting ship owners and operators, and provides for the businesses to be supported by a broad range of maritime services such as world-class port facilities, legal services, ship financing, ship management and ship broking. The key component of the strategy relates to regulation and fiscal policies. The government aims to respond to the maritime sector through constantly reviewing and updating the tax regime, incentives and other regulations. Research and development is another feature which Singapore anticipates will benefit all areas of the maritime industry.

7. Conclusion

While the economics and infrastructure development aspects of both ports are critical to appreciate, regulatory framework and government policies also have an important role to play in assessing port competitiveness. Shipping is a highly globalized industry and maritime businesses are increasingly showing a willingness to relocate when profit margins retract. Global shipping companies appear to take favourable tax and business regimes for granted. They are now showing interest in ports which have well-integrated and established logistics, financial and legal services sectors. Incentives spanning the whole of these areas are bound to attract businesses but supporting existing ones is equally important especially as those companies already have established networks.

The future of transshipment hubs is unclear and much has been written on the possible future. Evidence suggests that both Hong Kong and Singapore are shifting focus from transshipment to becoming a full maritime service centre (with transshipment operations a small part of that). The applicable regulatory framework will continue to play a pivotal role in shaping the success of the ports.

96 See, eg, Rodrigue, above n 13, 3.
97 See generally Notteboom, Ducruet and de Langen (eds), above n 6.