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

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About the Working Paper

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Executive Summary

The vast majority of the world’s top 20 busiest container ports are located in Asia. Although this provides extraordinary opportunities for the region’s ports overall, individually ports face new challenges and competition. China’s significant investment into its ports has boosted capacity, improved infrastructure and enhanced transhipment capabilities.

Shenzhen and Hong Kong are neighbours. Shenzhen’s proximity to manufacturing sources, however, has meant that its share of the region’s trade has grown markedly in recent years. But the Port of Shenzhen should not be viewed exclusively as a competitor: industry is quick to point out that opportunities for cooperation exist.

Overall transparency restricts efforts to properly identify and report on the regulatory framework of China’s ports.

Regulation and Incentives

The Shenzhen Free Trade Zone offers tax incentives as well as freedom in negotiating and entering into trade contracts. Local governments are empowered to issue incentives on top of central government initiatives. While incentives have traditionally focused on the manufacturing sector, Shenzhen is now encouraging the development of the services and logistics sectors. Incentives provided during the global downturn highlight the existence of a responsive and proactive approach to improving the Port of Shenzhen’s competitiveness.

Closer Economic Partnership Agreement (CEPA)

CEPA is one of Hong Kong’s key attributes in taking advantage of China’s rise. Numerous provisions of CEPA including supplements to the original text have enabled Hong Kong’s marine sector to penetrate the Chinese market, especially in Shenzhen and the wider Guangdong Province. Future expansion of CEPA and introduction of further maritime-specific provisions will no doubt improve cooperation and benefit Hong Kong’s maritime businesses.

A Shift Toward a Maritime Service Sector?

China is continuing to establish a credible presence in maritime arbitration. A specialised maritime arbitration commission as well as a Shenzhen-specific arbitration commission may indicate a push by China to expand its expertise across services related to the maritime sector. Hong Kong still retains significant advantages but as China’s dominance in world trade increases, these services may eventually compete with Hong Kong’s.

It is evident that Shenzhen’s port is not universally viewed as a direct competitor to Hong Kong. Nonetheless the evidence shows that it is and will continue to have a major effect upon the success of Hong Kong’s maritime sector. The search for cooperative arrangements and an emphasis on CEPA will help maintain Hong Kong’s pre-eminence in the maritime sphere.
1. Introduction

Hong Kong has traditionally served as the gateway to modern China and its port has played an integral role in this function. It is strategically located in the Pearl River Delta region of southern China; the leading trading region in China since the late 1970s. Although the opening of China’s economy has benefited Hong Kong – it was among the first Asian ports to be containerised – the rise of domestic ports on the Mainland poses significant challenges for the Port of Hong Kong. Hong Kong’s competitiveness as a centre for international maritime business and trade is a key issue for the government of Hong Kong. The Mainland government in Beijing has similarly signalled its support for the development of Hong Kong’s maritime industry in its 12th five-year plan.

The Port of Shenzhen in Guangdong Province is now ranked as the fourth busiest container port in the world in terms of container throughput, only slightly behind Hong Kong in third. Shenzhen has seen double digit growth rates in its containerized cargo throughput for a number of years and, despite some general declines across Asia during the global financial crisis, the rate of growth does not appear to be abating. In the first half of 2010 the port saw a 29.42 per cent surge in the number of containers handled. Effective government policy and regulation will remain critical to the ports that seek to make the most of the region’s booming trade.

This working paper will first identify the key features of the ports of Hong Kong and Shenzhen. In order to identify disparities and opportunities, it will examine the regulatory framework of Shenzhen, 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

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1 Industry groups launched the Hong Kong Maritime Forum in April 2011 to focus on ways to improve industry competitiveness and boost Hong Kong’s status as an international maritime centre: Keith Wallis, ‘Moves to strengthen HK’s position as maritime centre’, South China Morning Post (Hong Kong), 11 April 2011, B1.


4 Nine of the world’s top 10 busiest container ports are located in Asia and in 2009 ‘Chinese mainland ports accounted for approximately 23.3 per cent of the total world container port throughput’: United Nations Conference on Trade and Development, ‘Review of Maritime Transport 2010’ (Report by the UNCTAD Secretariat, UNCTAD/RMT/2010/93).
attribute the success or demise of a port to a single factor. Moreover, modern ports 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.3

3. Some Historical and Geographical Considerations

Hong Kong is an entrepôt economy historically relying on its proximity to mainland China and the Far East trade routes. Today China accounts for almost half of Hong Kong’s imports and exports, and the vast majority of its re-export trade.6 Excellent port infrastructure, facilities, and a business-friendly regulatory environment have contributed to recognition of Hong Kong as one of world’s leading hub ports and a competitive location to base marine business.

The Chinese government’s establishment of a special economic zone in Shenzhen in 1979 created a number of opportunities and challenges for Hong Kong.7 As many Chinese ports were ill-equipped to handle the sudden increase in exports from a rapidly expanding manufacturing sector, Hong Kong was the obvious port of choice. However, from 1979 to 2004, the Shenzhen Port invested over 30 billion Yuan into port infrastructure and related areas boosting its profile and usability. Other Mainland ports invested in upgraded facilities with the help of foreign capital and a rapid move to privatization of ports.8 ‘Since 1985, mainland China has invested more in its port development than the rest of the world combined’.9 Significant growth in laden container throughput in China is attributable to many factors including this increase in port investment and China’s rise as the world’s manufacturing powerhouse.10 Shenzhen exemplifies the rise of China’s ports.

The Shenzhen municipality comprises seven districts across an area of approximately 2000 square kilometres to Hong Kong’s north and the region has a number of separate

5 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.
7 For example, Wange 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’: James Wang and Michael Cheng, ‘From a hub port city to a global supply chain management center: a case study of Hong Kong’ (2010) 18 Journal of Transport Geography 104, 111.
port terminals. The primary container ports are Yantian in the east (described as the main competitor port to Hong Kong11), and Shekou and Chi Wan in the west. Also on the western coast are the ports of Ma Wan and Da Chan Bay. The ports within the Shenzhen municipality are collectively known as the Port of Shenzhen.

### 3.1 The Pearl River Delta region

The Pearl River Delta encompasses the low-lying areas near to the mouth of the Pearl River and is widely reported as the fastest growing region in China. It has been repeatedly labelled the manufacturing centre of the world.12 Much of the literature comparing the ports of Hong Kong and Shenzhen focuses on the unique aspects of the arrangements in the Pearl River Delta region:13

The Pearl River Delta Economic Zone, which consists of Guangzhou, Shenzhen, Dongguan, Foshan, Zhongshan, Zhuhai, Jiangmen, and parts of Huizhou and Zhaoqing, has been the most economically dynamic region of the Chinese Mainland since the launch of China’s reform programme in 1979.

Interestingly, the original reason for the focus on the Pearl River Delta region was its proximity to Hong Kong and there is evidence of ongoing investment in the region for this reason.14 A number of incentives and government concessions are specific to the Pearl River Delta further enhancing the competitiveness of the region.

On one view, the Port of Shenzhen could be considered a competitor threatening the success of the Port of Hong Kong.15 On another view, however, the success of Shenzhen’s port complements Hong Kong and adds a strategic dimension to the Pearl River Delta, resulting in a competitive regional shipping hub. Regardless of the ultimate outcome, it is a critical comparator port. As Notteboom, Ducruet and Langen write:16

Adjacent ports are typically fierce competitors, a competition that often contributes to the strong market positions of the respective seaports. However, the relationship between adjacent ports has also grown stronger in the sense that port executives as well as the private sector stress that, while maintaining a healthy competition, opportunities for cooperation and coordination can be further explored.

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12 There are some recent reports of a shift to the Yangtze River Delta: see, eg, Toh Han Shih, ‘HK, Shenzhen losing export role as factories move inland’, South China Morning Post (Hong Kong), 18 April 2011.
14 See, eg, ibid.
15 Cf. ‘Hong Kong: First port of call?’, China Daily (online), 8 October 2010 < http://www.chinadaily.com.cn/hkedition/2010-10/08/content_11383251.htm>. The report quotes a number of sources and figures indicating Hong Kong is losing shipping business to Shenzhen.
16 Notteboom, Ducruet and de Langen, above n 5, 2.
4. Regulatory Framework

Shenzhen was designated a “Special Economic Zone” (SEZ) in 1979 triggering rapid growth and foreign investment in the region. Almost immediately many manufacturing industries relocated from Hong Kong to Shenzhen. In recent years the region has shifted focus to encouraging the development of the service sector and the logistics industry.\(^{17}\)

4.1 An Introduction to Hong Kong’s Incentives

Hong Kong’s regulatory structure covering the maritime sector is well-established.\(^{18}\) The Marine Department is responsible for the day to day safety and operation of the port while the Port Development Council’s role concentrates on policy and infrastructure development.

Hong Kong’s tax system is generally recognised worldwide as extremely favourable for businesses. It has or is presently negotiating 22 Double Taxation Relief Agreements with various countries. Six relate specifically to shipping income and a further two relate to both airline and shipping income. It has a dedicated taxation provision for the calculation of shipping company profits, although there is an overall exemption for the international operation of Hong Kong registered ships.\(^{19}\)

The Marine Department has an annual tonnage charge reduction scheme in place for Hong Kong registered ships. It has also recently reduced fees for 24 marine-related services such as port dues, seafarers’ licences fees, and certificate fees.\(^{20}\) Hong Kong’s competitiveness is further enhanced by the Closer Economic Partnership Agreement (CEPA) with China (discussed below).

4.2 Shenzhen Free Trade Zone

The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) has reported that many Asian countries have introduced Free Trade Zones (FTZs) to attract foreign investment and develop infrastructure in relatively small areas.\(^{21}\) China has introduced different types of FTZs and they have historically accounted for its main economic activities. Shenzhen’s FTZs comprise the Shatoujiao FTZ (established in 1987 and the oldest in China), the Futian FTZ and the Yantian FTZ. The zones are regulated at both a central and local level, for example, Customs and Foreign Exchange are controlled at the State level whereas the Shenzhen municipal government is given power to make local regulations (in accordance with


\(^{18}\) For more information see the Working Paper entitled ‘Hong Kong and Singapore Ports: Challenges, Opportunities and Global Competitiveness’ (March 2011, Hong Kong Centre for Maritime and Transportation Law).

\(^{19}\) *Inland Revenue Ordinance* (Hong Kong) cap 112, s 23B.

\(^{20}\) 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*.

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national relevant regulations). Importantly, each zone is able to offer additional incentives on top of the central government initiatives.\(^{22}\)

Enterprises within the FTZ deriving income from ‘manufacturing, business operations and other resources’ pay a maximum tax rate of 15 per cent.\(^{23}\) Business income from providing ‘taxable services, transferring intangible assets, or selling real estate’ attracts tax from three to 10 per cent. Manufacturing enterprises with 10 years or more of operations within the Shenzhen FTZ receive additional concessions. These manufacturers are exempt from income tax for the first two profitable years and, during the next three years, a 50 per cent discount on the standard 15 per cent rate applies.\(^{24}\) Further tax incentives apply to goods re-exported outside China.

Companies receive further benefits from a substantial degree of freedom in negotiating and entering into trade contracts, exemptions on value-added tax, and liberal rules on foreign currency trade. FTZs also boast simplified customs procedures including fee exemptions for stored and transit goods. Imports entering the zone from outside China are exempt from both customs duty and value-added tax (VAT). Goods which are eventually imported to China from the FTZ will have a 17 per cent VAT applied.\(^{25}\)

Within the FTZ is an Export Processing Zone (EPZ) supervised by the customs authority. ‘The central government set up these small areas, completely fenced in and under 24-hour Customs supervision, to promote exports and crack down on the illegal sale of duty-free imports of raw materials.’\(^{26}\) Generally, the only businesses permitted to operate in the EPZ are those associated with export processing and transport within the zone.\(^{27}\) Fu and Gao trace the development of EPZs in China and provide a detailed commentary of the regulatory aspects and incentives offered.\(^{28}\)

4.3 Bonded Logistics Zone

A problem with a large number of China’s FTZs was that they were not connected to ports. Thus cargo had to undergo customs check procedures prior to entering the FTZ or port. As a result, in 2004 the government created bonded logistics zones, also known as “Zone-Port Interactive Areas” (ZPIAs). The zones create a direct path between the “bonded” area and the port enabling logistics companies to integrate and streamline operations. Although the areas are closely monitored by customs they do attract taxation and customs concessions. Article 7 of the Customs Bonded Logistics Park Management Measures permits the following activities to be carried out:

\(^{22}\) The UNESCAP report suggests that such initiatives may include land-use or utility incentives (p 61).
\(^{23}\) For further information refer to the Shenzhen Government Online <www.sz.gov.cn>.
\(^{24}\) Slightly different incentives apply to “hi-tech” enterprises.
\(^{25}\) Consumption tax may also apply in some circumstances.
\(^{26}\) ESCAP, ‘Free Trade Zone and Port Hinterland Development’, above n 21, 57.
\(^{27}\) See generally Several Provisions on the Export Processing Zone of Shenzhen City (Order of the People’s Government of Shenzhen City) No. 98, 1 December 2000.
storage, simple processing, international entrepôt trade and other international trade and logistics, transit, testing and exhibition.29

Goods entering the zone are treated as exports and VAT refunds can be applied. Goods leaving the zone are classified as imports to China. Yeung and Cheng identify the four functions of bonded logistics zones as transshipment, distribution, sourcing and re-export (manufacturing and retailing is not permitted within the zone).30 In the past, companies would take “a day trip to Hong Kong”: the supplier would obtain a VAT refund on export and then import the goods.

The zones were established to achieve two objectives. First, to promote China as an international shipping hub and attract goods previously flowing through South Korea and Hong Kong for processing; and secondly, to enable modern logistics services to develop better infrastructure and transshipment capabilities.31 It has been stated that ZPIAs “play a significant role in bridging together the domestic and international markets, promoting international trade, ushering in foreign investment and technical know-how as well as triggering the development of port-related industries.”32

It has been suggested that the zones are part of China’s strategy to increase entrepôt trade and change the perception among global shippers that China is not a feasible transshipment hub.33 Shenzhen has made progress through market liberalization including easier access to land and infrastructure and favourable export and import policies.34 This has resulted in attracting a large amount of foreign investment – over 40 per cent of Shenzhen’s GDP is attributable to output from foreign invested firms.

4.4 Business Incentives

Governmental accountability in the Shenzhen SEZ continues to improve and it has been reported that business procedures in Shenzhen are ‘simple and streamlined’.35 Under its “modern logistics development plan for 2015” Shenzhen will promote the establishment of a regional logistics hub relying on ‘integration, complementarity and cooperation’ with Hong Kong, the Pearl River Delta and southern China.36 According

31 See Andrew M Pan, ‘Industrial Zones in China: Overview and Incentives’ (North American Representative Office of Shenzhen, Presentation in Chicago, 20 April 2006) and Enright and Scott, above n 13, 89.
34 Reported in a 2007 study by Wanda Guo and Yueqiu Feng, ‘Special Economic Zones and Competitiveness: A Case Study of Shenzhen, the People’s Republic of China’ (Report by the Pakistan Resident Mission, Series No 2, November 2007) 11.
to the plan, Yantian Port is set to become a leading integrated logistics centre. Significant investment will be made into existing and future infrastructure projects across the SEZ.

In response to the global financial crisis, in 2009 Shenzhen Port announced a package of incentives to encourage shipping lines to call more often at its terminals worth US $45 million. It was reported as one of China’s largest incentives packages offered by any port in that year. As at 2007 some of the incentives in Shenzhen included: up to US $500,000 in relocation subsidies and office rental discounts to shipping companies setting up regional headquarters or operation centres; up to US $400,000 in subsidies and support to international logistics companies and freight forwarders setting up regional headquarters; bonuses to shipping companies or agents transferring laden containers to Shenzhen port for export; subsidies to inter-modal transport operators; and significant incentives to liner companies.

Although the use of incentives does not appear to be adopted as heavily and perhaps as consistently as Singapore, the rapid response to the decline during the global financial crisis demonstrates that Shenzhen has the financial wherewithal to maintain its status as a world-leading port.

4.5 Port State Control

‘Port State control is the regime under which ships are inspected in ports of the countries they visit to ensure they comply with internationally accepted standards’. The Hong Kong Special Administrative Region (HKSAR) and China are members of the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (“Tokyo MOU”), which came into effect on 1 April 1994. Hong Kong enforces port State control through the Marine Department and China through its Maritime Safety Administration. Regional port State control is based on a number of international conventions as outlined in section 2 of the MOU. It has been pointed out that regional port State control agreements may be ‘an attempt to avoid competition among ports and…balance the legal capacity of a port state with the economic needs and traditional expectations of the global shipping industry.’

38 Andrew M Pan, ‘Shenzhen Port Update’ (North American Representative Office of Shenzhen, Presentation, 12 September 2007) 44. See also ‘Shenzhen subsidies to woo shipping’, Portworld (online), 10 April 2007 <http://www.portworld.com/news/2007/04/67469>. Obtaining reliable information on incentives offered at the Port of Shenzhen is difficult.
States are required to inspect ships to ‘satisfy themselves that the crew and the overall condition of the ship, its equipment, machinery spaces and accommodation, and hygienic conditions on board, meets the provisions of the relevant instruments.’\textsuperscript{42} A more detailed inspection may be warranted. Where deficiencies which are ‘clearly hazardous to safety, health or the environment, the Authority will … ensure that the hazard is removed before the ship is allowed to proceed to sea’.\textsuperscript{43} Therefore, a vessel may be detained in certain circumstances. Additionally, Tokyo MOU member States have largely embraced the International Safety Management (ISM) Code and investigate whether vessels are carrying appropriate documentation.\textsuperscript{44} The authority will report on its inspections and the results.\textsuperscript{45}

### 4.6 Closer Economic Partnership Agreement (CEPA)

The Closer Economic Partnership Agreement (CEPA) is an agreement between the Mainland and Hong Kong designed to improve trade and business integration.\textsuperscript{46} Article 1 of the main text provides that the strengthening of trade and investment cooperation between the two sides will be achieved by:

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.

Article 11 of the main text states:

Either side will progressively reduce or eliminate existing restrictive measures against services and service suppliers of the other side in accordance with the content and timetable set out in Annex 4.

That Annex, entitled Specific Commitments on Liberalization of Trade in Services, allows Hong Kong service suppliers to set up wholly-owned enterprises in the Mainland to operate international ship management services, storage and warehousing for international maritime freight, container station and depot services, and non-vessel operating common carrying services. Further, it allows Hong Kong service suppliers to set up wholly-owned shipping companies in the Mainland to provide regular business services for vessels that they own or operate, such as shipping undertaking, issuance of bills of lading, settlement of freight rates, signing of service contracts, etc.\textsuperscript{47}

\textsuperscript{42} Tokyo MOU, para 3.1.
\textsuperscript{43} Tokyo MOU, para 3.7 (to be read with para 3.8 which allows the ship to proceed to a nearby port for appropriate repairs if necessary). The Marine Department of Hong Kong provides a detailed document outlining the port State control regimes and inspection process: see \url{http://www.mardep.gov.hk/en/others/pdf/pscguide.pdf} as at 18 April 2011.
\textsuperscript{44} See further McDorman, above n 41, 214.
\textsuperscript{45} Tokyo MOU, s 4.
\textsuperscript{46} 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.
\textsuperscript{47} See Annex 4 to CEPA (signed 29 September 2003).
In relation to freight forwarding agencies, Annex 4 allows Hong Kong service suppliers to provide, in the form of wholly-owned operations, freight forwarding agency services in the Mainland. The minimum registered capital requirement for international freight forwarding agency enterprises in the Mainland set up and capitalised by Hong Kong service suppliers will be the same as that for Mainland enterprises. Thus Hong Kong freight forwarding companies can open almost immediately. By comparison, other foreign companies are only permitted to do so one year after they have set up the relevant Mainland enterprises.

Some supplements to the original CEPA have enabled businesses in the maritime sector to penetrate the Mainland market. Hong Kong service suppliers may set up joint venture enterprises in the Mainland in order to provide third party international shipping agency services. Since January 2009, service suppliers have been able to set up wholly-owned enterprises and base branches in Guangdong Province to provide shipping agency services to vessel operators for routes between Guangdong Province and Hong Kong and Macao. In addition, since October 2009 they have been permitted to open 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.

CEPA has resulted in greater integration and openness among the economies of the Greater Pearl River Delta region. Hong Kong’s position as a leading services provider should enable it to benefit from CEPA. Hong Kong logistics providers, as noted above, are no longer required to partner with Mainland operators to offer freight forwarding, warehousing and other transport services within the Mainland. The Hong Kong Trade and Development Council reports that, since the implementation of CEPA, ‘services have become the focus of Shenzhen – Hong Kong cooperation.’ As a result of CEPA, in 2004 South-China International Logistics and Modern Terminals Ltd (Hong Kong) signed an agreement of cooperation to develop a “bonded logistics centre” in the region. The Hong Kong Trade and Development Council cites this example as part of a ‘growing trend’ of cooperation.

48 See Annex 4 to CEPA (signed 29 September 2003).
50 CEPA Supplement IV (effective January 2008): the Hong Kong service suppliers’ shareholding should not exceed 51 per cent.
51 CEPA Supplement V (effective January 2009).
52 CEPA Supplement VI (effective October 2009).
53 See, eg, Enright and Scott, above n 13, 12-13; Hong Kong Trade and Development Council <http://www.hktdc.com>; Edward Leung, Chief Economist, Hong Kong Trade and Development Council, ‘CEPA: Cross-boundary Business Opportunities’ (Presentation to Advantage Austria, 18 September 2009). A study on CEPA’s effect upon Taiwan’s economy highlighted the benefits to Hong Kong and, conversely, the disadvantages faced by other countries such as Taiwan: Lin Chu-chia, ‘Development of the China-Hong Kong CEPA and Its Impact on Taiwan’ (2005) Taiwan Development Perspectives 57.
The opportunities for businesses in the services sector is enhanced by CEPA. Fong writes:

The best way for overseas service suppliers to leverage on CEPA to gain access to the Mainland market is to set up a service company in Hong Kong, or partner with, invest in or even acquire service suppliers in Hong Kong. Overseas service suppliers acquiring an existing Hong Kong service supplier need to operate in Hong Kong for one year to demonstrate they are carrying on substantive business operations after the acquisition. If a foreign services supplier acquires less than 50 percent equity interest in a Hong Kong service supplier, the one year time bar does not apply.

Better transport infrastructure will improve access to Mainland markets and augment CEPA’s aims. For example, the integration of regional transport networks will be enhanced by the development of the Hong Kong-Zhuhai-Macau Bridge which has an expected completion date of 2016. It must be remembered that CEPA is not a one-off measure. As supplements to the original text attest, it is an ongoing process of liberalization between the Mainland and Hong Kong.

4.7 Ownership

The Hong Kong government’s role in port management is minimal – it provides the land and chooses the location of terminals, and it provides public services for port operation such as piloting and security. China reformed the management of its ports in 2001 and port responsibility now largely rests with the local (municipal) government which controls port planning, administration and terminal operations through a port authority. Regulatory and operational functions are separate: municipal governments control the regulatory matters while a state-owned enterprise has responsibility for the operational function. Private operators run the individual terminals.

Hutchison Whampoa Ltd has a majority stake in Hong Kong International Terminals at the Hong Kong Port and maintains a strong shareholding in the Shenzhen ports. It owns 48 per cent of Yantian International Container Terminals, and 42 per cent of each of Yantian International Container Terminals (Phase III) and Shenzhen Yantian West Port Terminals. Yantian has been described as Hutchison Whampoa’s greatest port asset with its good road connections to Mainland factories.

55 Fong, above n 49, 59. Fong also discusses the ‘WTO-plus’ benefits that have been offered. Fong describes WTO-plus as ‘better and earlier market access than what Hong Kong and the Mainland have committed to other WTO members’. This means that Hong Kong receives ‘wider access’ to the Mainland by providing ‘better access rights, lower entry thresholds, relaxed equity control and accreditation of qualification requirements’ and more. However, the first move advantage for Hong Kong has no doubt be diluted over time: see John Wong and Xhang Yang, ‘Hong Kong’s CEPA with China: Round Two’ (2006) 4 China: An International Journal 114, 127.


58 ESCAP, ‘Free Trade Zone and Port Hinterland Development’, above n 21, 34.

The presence of Hong Kong port owners in Shenzhen has shippers concerned that Shenzhen fees will be forced upward. On the other hand, the arrangement could improve Hong Kong’s competitiveness and encourage integration between the ports. According to commentators, the acquisitions by Hong Kong-based terminal operators are strategic as they recognize the huge potential in the Pearl River Delta region.\(^{60}\)

### 5. Arbitration

Hong Kong and Singapore collectively heard approximately 700 arbitral disputes in 2009. Each is continuing to focus attention on developing international maritime arbitration expertise in order to broaden the maritime services cluster. The presence of maritime arbitration capabilities arguably increases the competitiveness of these hub port cities.

China acceded to the New York Convention in 1987 with some reservations.\(^ {61}\) Arbitration in China is subject to the *Arbitration Law* of the People’s Republic of China (PRC).\(^ {62}\) Article 9 of that Act provides that the arbitration award is final and ‘the arbitration commission or the people’s court shall not accept the re-application of the suit concerning the same dispute by any of the parties concerned’. An award is enforceable by the people’s court according to the Civil Procedure Law.\(^ {63}\) Chapter II deals with the setting up of Arbitration Commissions and Associations: they are to be ‘independent of any administrative organ’.\(^ {64}\) Chapter VII is a special chapter applicable to arbitrations relating to ‘foreign interests’; foreign economic cooperation and trade, transportation and maritime matters. It empowers the China International Chamber of Commerce to, among other things, create foreign arbitration commissions, appoint arbitrators (including overseas nationals), and formulate rules. The China International Chamber of Commerce created the China Maritime Arbitration Commission (CMAC) and oversees the China International Economic and Trade Arbitration Commission (CIETAC).\(^ {65}\)

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

Although general arbitration expertise in Hong Kong is well-established, it is fostering expanding interest in maritime arbitration. The HKIAC established the


\(^{61}\) 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’). The Convention is applicable to Hong Kong.


\(^{63}\) See Ch VI; art 62.

\(^{64}\) Art 14.

\(^{65}\) Both discussed below. The CIETAC was formerly known as the Foreign Trade Arbitration Commission, set up in 1956 under the China Council for the Promotion of International Trade. Since 2000 it has also been known as the Arbitration Court of the China International Chamber of Commerce.
Hong Kong Maritime Arbitration Group (HKMAG) in 2000. The Group, which maintains a register of experienced maritime arbitrators, is a response to growing demand from the industry. A new Arbitration Ordinance was passed by the Legislative Council on 11 November 2010 and is expected to enter into force in mid-2011. The new ordinance aims to reduce the costs of arbitration through a number of measures including reduced judicial intervention, retaining provisions for “documents only” hearings for smaller claims, and incorporating maximum recoverable limits for arbitrators’ fees and lawyers’ costs.

The HKIAC charges a registration fee (applicable to all submitted Notices of Arbitration) and an administrative fee. The latter is calculated according to a percentage of the value of the sum in dispute. For example, for a claim with a value of $100,000, an administrative fee of 0.70 per cent is payable. Arbitrators’ fees are in addition to the above charges and also vary according to the sum in dispute.

5.2 Shenzhen Arbitration Commission (SZAC)

The SZAC was formed in 1995 and is one of the earliest civil and commercial arbitration institutions formed in China. Since its inception it has heard over 17,000 cases involving nationals and companies of various jurisdictions worldwide. Three separate arbitration courts exist under the SZAC: the Shenzhen Court of Financial Arbitration, the Shenzhen Arbitration Court of Medical Dispute, and the Shenzhen Civil and Commercial Mediation Centre.

The SZAC ‘accepts cases involving disputes over contracts and over property rights and interests between natural persons, legal persons and other organizations that are equal subjects of law both in and outside the territory of the People’s Republic of China.’ The arbitral award is final and neither party is entitled to bring a suit before the people’s court regarding the same dispute after an award is made. A ‘Summary Procedure’ is detailed in Chapter IX and applies to disputes in which the claim is for less than 800,000 Yuan, or in other cases where the parties agree. The summary procedure is simplified and involves shorter timeframes. Chapter X contains some rules specific to foreign related arbitrations, that is, arbitrations in which a party or both parties are foreigners. The SZAC has processes in place to encourage settlement and mediation.

The Commission charges a ‘Case Acceptance Fee’ and a ‘Case Handling Fee’. Each consists of a set fee plus a percentage amount of the value of the claim. For example, a claim of 1,500,000 Yuan would attract an acceptance fee of 18,550 Yuan plus 0.5

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66 Arbitration Ordinance (Hong Kong) cap 609.
67 For disputes with a value less than $50,000 USD or greater than $50,000,001 a predetermined fee applies.
68 The fees are attached as a Schedule to the Rules.
70 Shenzhen Arbitration Commission (SZAC) Rules, r 3.
71 Rule 6.
72 Generally, these rules provide for: service of documents (r 81); different time limits for: the filing of a defence and counterclaim (r 82), formation of the tribunal (r 84), notice of oral hearing (r 85), and rendering the award (r 86); measures of preservation of property (r 83); and enforcement (r 88).
per cent of 500,000 Yuan (being the amount exceeding 1,000,000 Yuan). The case handling fee is calculated in a similar fashion.

### 5.3 China Maritime Arbitration Commission (CMAC)

The CMAC is based in Beijing and oversees a sub-commission in Shanghai, and liaison offices in Tianjin, Ningbo, Dalian and Guangzhou. Its 165 arbitrators are experienced in navigation, insurance, maritime law and other related fields. The Commission also incorporates a Logistics Dispute Resolution Centre and a Fishery Dispute Resolution Centre. The former is authorised to accept all cases arising from or in connection with logistics such as ocean shipping, land and air transportation, container transport, storage, agency, handling, loading and discharging, and insurance.

Article 2 of the CMAC Rules enables the Commission to accept cases involving:

1. Disputes arising from charter party, contract of multi-model transport, carriage of goods by sea or waters or carriage of passengers in connection with bill of lading, waybill or any other transport documents;
2. Disputes arising from sale, construction, repair, chartering, financing, towage, collision, salvage and raising of ships or other offshore mobile units, or from sale, construction, chartering, financing and other relative business of containers;
3. Disputes arising from marine insurance, general average or ship’s protection and indemnity;
4. Disputes arising from supply of ship’s stores or fuel, ship’s security, ship’s agency, seamen’s labor service or port’s handling;
5. Disputes arising from exploitation and utilization of marine resources or pollution damage to marine environment;
6. Disputes arising from freight forwarding, non-vessel operating carriage, transport by highway, railway or airway, transport, consolidation and devanning of containers, express delivery, storing, processing, distributing, warehouse distributing, logistics information management, or from construction, sale and leasing of tools of transport, tools of carrying and handling, storage facilities, or from logistics center and distribution center, logistics project planning and consulting, insurance related to logistics, tort or others related to logistics;
7. Disputes arising from fishery production or fishing; and
8. Other disputes submitted for arbitration by agreement between parties.

Time limits are generally set by the parties although confirmation by the tribunal is required (art 35). The tribunal may ‘undertake investigations and collect evidence on its own initiative if necessary’ (art 36). The Rules additionally provide a ‘Summary Procedure’ for claims totalling not more than 1,000,000 Yuan or in other cases where the parties agree. Under the Summary Procedure, written submissions are provided within certain timeframes and the tribunal is empowered to hear the case on the written materials alone.

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74 The Chinese language is the official language of the Arbitration Commission but, if the parties have otherwise agreed, the language agreed in the agreement shall prevail: art 82.
76 See Ch III.
The CMAC, like the SZAC, charges a Registration Fee and a Handling Fee involving a fixed component and a variable component based on the amount of the claim. The SZAC Case Acceptance fee is slightly higher for claims in excess of 1,000,000 Yuan and there are some slight differences in the handling fees. The fees are otherwise comparable.

5.4 China International Economic and Trade Arbitration Commission (CIETAC)

The CIETAC ‘independently and impartially resolves, by means of arbitration, disputes arising from economic and trade transactions of a contractual or non-contractual nature.’ The Rules provide that CIETAC will also accept cases involving disputes related to the HKSAR and domestic disputes (art 3). It has a sub-commission based in Shenzhen known as the CIETAC South China Sub-Commission. Agreements may incorporate an arbitration clause providing for arbitration by CIETAC or one of its sub-commissions.

CIETAC’s international caseload appears to be significant. Between 2001 and 2008 it received between 422 and 562 new international cases annually and in 2009 it received 559. In comparison, the HKIAC had 309 international arbitrations in 2009.

6. Implications and Inferences

6.1 Challenges

The Hong Kong Port has been noted for its pre-eminence in high end services, range of shipping lines and extensive coverage of destinations. Shenzhen traditionally competed at the lower end offering the lowest port charges in the region but with limited destinations and low service frequency, particularly at Shekou and Chiwan Ports. Yantian Port had the highest charges on the Mainland but offered a more competitive turnaround time and better global network integration. Various incentives and a rapidly developing economy in the Pearl River Delta region have shifted the balance.

A report commissioned by the Better Hong Kong Foundation noted that Hong Kong was rapidly losing market share in cargo throughput to Shenzhen’s ‘newer and cheaper ports’. It concentrated on the significantly greater transport costs for containers arriving in Hong Kong as opposed to Shenzhen. The additional trucking costs were broken down into three categories: higher operating costs (e.g. parking, insurance, maintenance, etc.), higher operating costs due to cross-boundary

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77 China International Economic and Trade Arbitration Commission (CIETAC), Arbitration Rules (adopted 11 January 2005, effective 1 May 2005), art 2 (‘the Rules’). See <http://www.cietac.org/>. Art 29 provides that the arbitration may be conducted in either an inquisitorial or adversarial mode.


regulations (primarily the costs associated with cross-boundary licenses), and the low frequency of trips.\textsuperscript{80} Cullinane \textit{et al} write:\textsuperscript{81}

As far as distance is concerned, there is not a great deal of difference between them, but in terms of convenience, Shenzhen has the psychological and administrative advantage in that there are no border crossings involved in using the Shenzhen ports as opposed to the port of Hong Kong.

The success of the Shenzhen and Hong Kong economies can equally be traced to the locale of the Pearl River Delta. Shenzhen’s success originated from its proximity to Hong Kong and the substantial investment from that financial centre.\textsuperscript{82} Hong Kong, partly as a result of the burgeoning investment in the Pearl River Delta, has become a ‘management, coordination, information, business service and financial centre of global importance.’\textsuperscript{83}

Loo and Hook point to the Hong Kong Port’s reliance on short-distance container traffic (that is, container traffic transported to Hong Kong by river trade or road from nearby manufacturing centres) as presenting challenges in future as Mainland ports in the Pearl River Delta compete for this traffic.\textsuperscript{84} But the ownership of structure of Hong Kong and Yantian (both owned by Hutchinson Whampoa) may promote collaboration as opposed to competition.\textsuperscript{85}

According to a 2010 review by the US Department of Commerce, ‘oceanic pollution and the industry’s structural imbalances continue to present challenges for the development of [China’s] marine industry.’\textsuperscript{86} The regional cooperative agreement on port State control will no doubt focus further attention on this issue. 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 Guangdang, Guangzhou, Macau, Shenzhen, Zhuhai and Hong Kong which is directed to dealing with oil spills in the Pearl River Delta.\textsuperscript{87} The Hong Kong Marine Department’s Pollution Control Unit is primarily responsible for prevention and clean-up operations. Significant work is being undertaken by industry groups such as the Hong Kong Shipowners’ Association to reduce air pollution and greenhouse gas emissions attributable to shipping in the region. This has included active participation in the development of MARPOL Annex VI.\textsuperscript{88}

\textsuperscript{80} Ibid.
\textsuperscript{81} Cullinane, Wang and Cullinane, above n 9, 48.
\textsuperscript{82} Guo and Feng, above n 34, 9.
\textsuperscript{83} Enright and Scott, above n 13, 9-10.
\textsuperscript{84} Becky P Y Loo and Brian Hook, ‘Interplay of international, national and local factors in shaping container port development: a case study of Hong Kong’ (2002) 22 \textit{Transport Reviews} 219, 236
\textsuperscript{85} Ibid 235-6.
\textsuperscript{87} Regional Maritime Oil Spill Response Plan (RMOSRP). This is in accordance with the OPRC Convention: \textit{International Convention on Oil Pollution Preparedness, Response and Cooperation}, opened for signature 30 November 1990, 1891 UNTS 78 (entered into force 13 May 1995): see, eg, art 6.
\textsuperscript{88} \textit{International Convention for the Prevention of Pollution from Ships} (as amended by Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships), opened for
6.2 Disparities

Hong Kong is clearly establishing itself as a hub for maritime services. Its traditional role as a transshipment hub will continue to face pressure from mainland China where the vast majority of export goods historically shipped from Hong Kong are manufactured. The focus on arbitration is one example. Shenzhen does not appear to be competing on this level; and there may be no need if the Pearl Delta Region is seen as a cooperative maritime effort. However, Shenzhen’s focus on logistics might not be viewed in the same light.

China has established a number of Arbitration Centres. The Shenzhen Arbitration Commission and the China Maritime Arbitration Commission provide the maritime industry with dispute resolution options. The absence of statistics makes it impossible to determine the success of the Commissions and which of the two is predominant in maritime arbitrations. Nevertheless the presence of these two Commissions, in addition to the CIETAC, enhances the ability of Shenzhen to better match the cluster of maritime services offered in Hong Kong. Hong Kong retains a distinct advantage in permitting the parties, in the optional maritime arbitration clause, to have the contract governed and construed in accordance with Hong Kong or English law. The CMAC and SZAC model arbitration clauses do not contain a choice of law clause but it is likely that the law chosen would be Chinese.

Hong Kong has negotiated a limited double taxation agreement (DTA) covering shipping income with Singapore. China has a comprehensive DTA with Singapore which extends to various types of income, including shipping.

It must be said that China continues to attract criticism as an unpredictable economy with a certain degree of political risk. The government is actively modernising the business environment but its legal and regulatory environment, specifically from the view of foreign investors, has been described as ‘opaque, inconsistent, and often arbitrary.’ Despite the challenges, foreign investment is thriving throughout China and this may prompt further reforms.

Hong Kong is one of the oldest FTZs in the world. Supporting services for the maritime sector in Hong Kong, for example export finance, trade documentation and logistics, not to mention industry groups, are well-established. Furthermore, a business-friendly tax regime and favourable customs laws make Hong Kong competitive. Nevertheless the attractiveness of Shenzhen not only as a port of call but as a place to base business has risen markedly in the past decade. The implementation of FTZs and associated financial incentives for the maritime sector establishes the Shenzhen Port as a viable option for marine businesses, especially those seeking to move closer to manufacturing sources.


It lists “modern logistics” as one of its four “pillar industries”.

US & Foreign Commercial Service and US Department of State, above n 86, 3.


6.3 Possible Opportunities for Hong Kong

It is difficult to distil precise opportunities for Hong Kong. The industry has indicated support for closer integration across the maritime sectors and it is easy to see why. Shenzhen’s Port is virtually controlled by the owners of Hong Kong’s port and is closer to manufacturing sources. Additionally, many vessels continue to call at both ports. It is also important to recognise the abundance of active industry groups located in Hong Kong: this undoubtedly makes it (and possibly the Pearl Delta Region more broadly) a viable location for maritime businesses.

Hong Kong’s advantage lies in its ability to cooperate effectively with the Mainland under the CEPA and its broad base of established industry services. CEPA continues to provide benefits for Hong Kong businesses:

As an economy where over 90% of … GDP comes from services, Hong Kong’s strengths lie in services. On the other hand, the Mainland’s services sector has been developing as a noticeably slower pace compared to its manufacturing sector. The potential hence for overseas firms under CEPA is enormous.

Fong adds that:

Many world leading service suppliers in the field [of transportation and supply chain management services] have leveraged on CEPA and set up wholly-owned transport and logistics operations in the Mainland.

There is inadequate evidence to suggest that financial incentives offered by Shenzhen have had any real effect on increasing its share of container traffic. Perhaps most crucially, the financial incentives delivered during the global financial crisis gave operators a certain degree of confidence in this developing region and enabled it to avoid steeper decreases in its container throughput.

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93 See generally Wei Yim Yap and Theo Notteboom, ‘Unravelling Dynamics in Inter-Container Port Relationships through an Examination of Liner Service Patterns’ (Paper presented at proceedings of the International Association of Maritime Economists Conference, Copenhagen, June 2009).
94 Peiyu Zheng suggests that this is even more important since China’s accession to the World Trade Organisation in 2001: see Peiyu Zheng, ‘Transforming the Structure of the Pearl River Delta – Hong Kong Region to Enhance International Competitiveness’ in Anthony Gar-on Yeh et al (eds), Developing a Competitive Pearl River Delta in South China under One Country - Two Systems (Hong Kong University Press, 2006) 97.
95 Fong, above n 49, 59.
96 Ibid 60.
7. Conclusion

The impetus for Hong Kong and Shenzhen to move toward collaboration in the maritime sphere may already exist. Recent reports suggest that Chinese factories are moving further inland and in some cases, closer to Shanghai and the Yangtze River Delta, in search of greater economies of scale. Whether or not this trend will sustain is questionable. Moreover, it is unclear what contribution to trade those factories have made.

The forecast annual growth rate for cargo in the region is 8.6 per cent to 2020. The forecasts imply that Shenzhen’s market share of cargo in the region will increase to 55 per cent (from 16 per cent in 1999). Furthermore and contrary to the implications suggested by the report outlined above, the United Nations Economic and Social Commission for Asia and the Pacific pointed out that ‘by 2020 Shanghai is expected to be overtaken by Shenzhen to become the world’s largest container port.’

It is, of course, impossible to forecast which outcome will prevail. In the meantime most ports in China are concentrating on expanding capacity and upgrading and modernizing port facilities and operations. It is possible that many of Shenzhen’s business-friendly policies have been inspired by Hong Kong’s well-established and competitive customs and trade regimes, low tax and industry incentives. Nevertheless Hong Kong retains a number of competitive advantages such as well-integrated finance, legal and other service sectors, including a healthy body of industry groups. Efforts toward collaboration will not be limited to transport infrastructure; it will involve strengthening links across the maritime business cluster. Therefore, policies and regulation affecting the entirety of Hong Kong’s maritime sector need to appraise reforms with potential cooperation (and, no doubt in some cases, competition) in mind.

97 See, eg, Toh Han Shih, ‘HK, Shenzhen losing export role as factories move inland’, South China Morning Post (19 April 2011) B2.
98 Kevin Cullinane, ‘Port Competition in China’ (Presentation at the Centre for Transport Research, University of Aberdeen, 23 October 2007).
100 US & Foreign Commercial Service and US Department of State, above n 86, 53.