

Trade in Service Agreement (TISA), a Trial for stalemate WTO/DDA in Maritime Transport

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ABSTRACT

The Trade in Service Agreement (TISA), a new plurilateral service agreement and a prominent substitute negotiation for stalemate DDA negotiations has been discussed by the participating 22 countries including Korea, USA, EU countries, Japan, and other countries since 2012. In maritime transport services, we could recognize a confrontation between European participants asserting full liberalisation of feeder services and transportation of transport equipment within domestic water of member countries, and Asian participants and American participants protecting cabotage activities. Even though the discussion over cabotage issues is becoming severer, we find a progress on liberalisation of maritime transport, especially commitment draft of the United States at land-side transport services, and new definition on maritime offshore services by Norway.

Keywords: TISA, DDA, maritime transport, cabotage, plurilateral agreement
Journal of Economic Literature classification: Q2, O1, R3

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1. Introduction

Since the WTO Doha Development Agenda (DDA) negotiations met a stalemate mainly in agricultural industries and non-agricultural market access (NAMA) areas, WTO Ministers announced the impasse and made a commitment to further negotiations in certain areas covered by the DDA in December 2011 (Sauve, 2013; EC, 2013a). Some WTO members led by the United States and Australia started to discuss over a stand-alone agreement on trade in services in order to finalise the DDA negotiations among willingly WTO Members. In February 2013, the European Commission (EC) formally proposed to open a new plurilateral agreement on trade in services (Sauve, 2013).

The Trade in Service Agreement (TISA) initially being called the International Service Agreement (ISA) included 22 WTO members¹⁾ belonging to the Really Good Friends of Service (RGFS) grouping. The 22 WTO members are both developed countries such as Korea, the United States and EC, and developing countries including Chile, Paraguay, Peru and other countries. The 22 WTO members represented about two thirds of global cross-border services (excluding intra EU trade in 2010) (EC, 2013a). Being the biggest exporters of services in the world and sharing about 26 % of world total export of services and half of all foreign investment flowing from the EU to other parts of the world, EU companies have been eager to improve legal security and access to new service market opportunities (EC, 2013b).

The amount of exports of services of Korea has been rising from 31 billion US dollars in 2000 to 95 billion US dollars in 2011, recording 10.6% of average annual growth rate during the period (IMF, 2012). On the other hand, the figures of imports of services of Korea have been soaring from 34 billion US dollars in 2000 to 99 billion US dollars in 2011. Korea has been faced the deficit of balance in service trade due to lower competitiveness in service industries including professional services, computer and related services, research and development services even with aggressive position in maritime transport. Nevertheless there have been many opportunities and threats in maritime transport: containerisation and multimodal transport expansion since the 1950s; growth and progress of Chinese marine industry after the 1990s; and periodical maritime business cycles of short period boom and long-term recession; and incessant enlargement of container vessels.

This paper aims to review the structure of TISA, analyze the main issues of maritime transport in TISA and conclude some implications for Korean maritime industry and companies. Especially this paper tries to find a confrontation between European participants and other participants in TISA on liberalization of domestic coastal shipping

1) EU, Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, the Republic of Korea, Mexico, New Zealand, Norway, Panama, Paraguay, Pakistan, Peru, Switzerland, Turkey and the USA.

or cabotage activities. Chapter Two examines the characteristics of TISA such as structure and differences with other negotiations and lists participants. Chapter Three scrutinizes main issues in maritime transport of TISA, evaluates the responses of main participants in maritime areas and describes discussions at the maritime areas. Chapter Four focuses on the cabotage related issues which was suggested by Norway in 2012: feeder services, transportation of transport equipments such as container vans, and maritime offshore services. Since transshipment services of containers shares approximately 27% of the world's container throughput, cabotage which restricts transshipment activities of shipping companies by foreign shipping within a country becomes more important (Meng and Wang, 2011; Wang *et al.*, 2013). Chapter Five concludes this paper and suggest some policy development agendas. This paper uses the methodology of literature review and evaluation of key issues in TISA through assessing maritime policy on cabotage of main participants in TISA.

2. Architecture and Major Participants of TISA

2.1 Architecture and core elements

At the start of exploratory talking in 2012, the RGFS targeted an agreement being a full part of the WTO system not a Free Trade Agreement (FTA) among the participants (Sauve, 2013). In addition the 22 participants have the aim of plurilateral trade in services agreement that is well suited with the General Agreement on Trade in Services (GATS).²⁾ The GATS in 1995 was propelled by the same initiative as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT): ensuring fair and equitable treatment of all participants; stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization (WTO, 2013). The GATS is of great importance in helping service suppliers to play a vital infrastructure role in the world economy (Chanda, 2003). The fundamental principle of GATS is summarised into five points: 1) progressive liberalisation through binding commitment in schedules, 2) non-discrimination and transparency, 3) regulations that are reasonable, objective, impartial, and not more burdensome than necessary, 4) competition safeguards aimed at the realization of obligations and commitments, and 5) flexibility in recognition of national sovereignty and economic development needs (Tuthill, 1997).

2) GATS is an annex of Agreement Establishing on the World Trade Organization (WTO) which was concluded in 1993 and included at the final agreement in UR. GATS is one of the three pillars of WTO: the others are Multilateral Agreements on Trade in Goods and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Ministry of Justice of Korea, 2000).

Therefore, the participants agreed that the architecture of agreement would be based on the GATS, with some core GATS articles including definitions, scope, market access and national treatment, general and security exemptions (Sauve, 2013). According to the architecture of GATS, TISA would have two sorts of provisions; the first are general obligations, some of which apply to all service sectors such as most-favoured nation (MFN) and transparency and some only to scheduled specific commitments, e.g. payments and transfers; and the second are specific commitments, negotiated undertakings particular to each signatory (WTO, 2001). Specific commitments, upon the conclusion of negotiations, are to be recorded in schedules which will be attached to, and form an integral part of, the TISA.

Commitment schedules which contain footnotes, head notes and attachments are a record of legal commitment in which a member intends to be legally binding (WTO, 2001). Generally a commitment schedule illustrates the main information: a clear description of the sector or subsector committed, limitations to market access, limitations to national treatment, and additional commitments other than market access and national treatment. If a member undertakes a commitment in a sector then it must indicate for each mode of supply that it legally binds in that sector (WTO, 2001). There are four columns in a commitment schedules: definitions, market access commitments, national treatment commitments and additional commitments.

2.1.1 Limitations on market access³⁾

The limitation on market access is constraints at each modes of supply to market of a member to the supplier of other member. The four modes of supply as shown in Table 1 are 1) cross-border supply, 2) consumption abroad, 3) commercial presence, 4) and presence of natural persons. This limitations would grant full market access in a given sector and mode of supply when it does not maintain in that sector and mode any of the types of measures listed in the Article XVI, Limitations on Market Access. The limitation measures include four types of restrictions, limitation on forms of legal entity and on foreign equity participation. The quantitative restrictions can be expressed numerically or through the criteria specified in sub paragraphs. These criteria do not cover the quality of the service supplied or the ability of the supplier to supply the service such as minimum paid-in capital (Ministry of Justice of Korea, 2000; WTO, 2001).

3) WTO, Guide lines for the Scheduling of Specific Commitments under the General Agreement of Trade in Services (GATS), 2001.

Table 1. Mode of Supply in WTO negotiation

Mode	Supplier Presence	Other criteria
Cross-border supply	Service of supplier not present within the territory of the member	Services delivered within the territory of the member, from the territory of another member
Consumption abroad		Services delivered outside the territory of the member, in the territory of another member, to a service consumer of the member
Commercial presence	Service of supplier present within the territory of the member	Services delivered within the territory of the member, through the commercial presence of the supplier
Presence of natural person		Services delivered within the territory of the member, with supplier presence as a natural person

Source: WTO (2001). Chanda (2003).

Note: Origin of service at cross-border supply in international maritime transport services is a ship registry country (Norio, 2010).

2.1.2 Limitations on national treatment

The limitations on national treatment describe the discrimination on suppliers of other member by a member. A member grants full national treatment in a given sector and mode of supply when it accords in that that sector and mode of competition no less favourable to services or service suppliers of other members than those accorded to its own like services and service suppliers (WTO, 2001). The national treatment standard does not require standard of the same treatment of domestic and foreign suppliers. Formally different measures can result in effective equality of treatment. Hence, limitations on national treatment include cases of both de facto and legal discrimination.

2.1.3 Additional commitment

Additional commitments are supplementary commitments affecting trade in services not scheduling under Articles of limitation on market access and limitations on national treatment. Additional commitments are expressed in the form of undertakings, not limitations.

2.1.4 Levels of commitment

Levels of commitment contain full commitment, commitment with limitations and no commitment (WTO, 2001). In full commitment, expressed as None, a member does not seek in any way to limit market access or national treatment in a given sector and mode of supply through measures inconsistent with articles of limitation on market access and limitations on national treatment. Commitment with limitations embrace two situations: the binding of an existing situation, Standstill and the binding of a more liberal situation where some of the measures inconsistent with the articles of limitation on market access

and limitations on national treatment will be moved, Rollback. In no commitment expressed as Unbound a member remains free in a given sector and mode of supply to introduce or maintain measures in inconsistent with market access and national treatment.

2.2 Major participants and their maritime industry

To date, TISA shows areas of domestic regulation, international maritime transport services, Information and Technology (IT) services, e-commerce, computer related services, postal and courier services, financial services, temporary movement of natural persons, government procurement of services, export subsidies and state-owned enterprises. Among the areas, international maritime transport services is a main area where participants have distinctive different views on definitions, scope, range of commitments on market access, national treatment and additional commitment.

Major countries in global shipping market are participating at TISA. Among top 20 ranks in the basis of owned fleets in 2011, there are 15 TISA participants and five non- participants (<Table 2>). Japan ranks top and owns 143 million GT of 3,946 vessels; Greece in second rank with 130 million GT of 3,317 vessels; Germany in third rank with 76 million GT of 4,025 vessels; the United States in fifth rank with 43 million GT of 2,051 vessels. Korea with 34 million GT records seventh rank, following the UK in sixth rank with 35 million GT. We could see other TISA participants: Norway in eighth with 29 million GT, Denmark in ninth with 279 million GT and Hong Kong in tenth with 24 million GT.

Also in the basis of registered fleets, Panama records top rank; Hong Kong stays in fourth rank and Cyprus in tenth rank. Nevertheless, non-participants such as Liberia, Marshall Islands, Singapore, Bahamas remain within tenth rank. The nationality of owners of Panama fleets is composed of Japan sharing 53 % of Panama fleets, Korea, Greece, Taiwan and other TISA participants.

Table 2. World Fleet by Nationality of Owner(2011)

Rank	Country	TISA participation	Fleet	
			Number	1,000GT
1	Japan	Participant	3,946	143,269
2	Greece	Participant	3,317	129,870
3	Germany	Participant	4,024	76,247
4	China	Non	3,623	47,752
5	U.S.A.	Participant	2,051	42,623
6	U.K.	Participant	1,152	34,701
7	Korea	Participant	1,240	34,153
8	Norway	Participant	1,971	28,856
9	Denmark	Participant	1,032	27,456
10	Hong Kong	Participant	821	24,408
11	China (Taiwan)	Participant	692	23,383
12	Singapore	Non	1,091	18,797
13	Italy	Participant	834	14,938
14	Canada	Participant	453	14,441
15	Russia	Non	1,792	14,297
16	Turkey	Participant	1,171	12,374
17	India	Non	560	11,127
18	Malaysia	Non	526	10,442
19	France	Participant	486	8,655
20	Belgium	Participant	267	8,472

Source: HIS Fairplay (2012).

In the world liner fleet ranks as shown in Table 3, we can read the competition between European countries and Asian countries. While Maersk shipping company of Denmark ranks top and MSC shipping company of Swiss ranks second, COSCO and China Shipping of China follow them in rank third and fourth. Hanjin shipping company of Korea records rank eight. Since European countries have developed one Single European Maritime market and liberalised feeder services in Europe, European countries are eager to add feeder services and transportation of transport equipment in domestic coastal shipping as maritime agendas in TISA. We could find dynamic strategic alliances between global liner shipping companies, e.g. Grand Alliance, New World Alliance and CKYH Alliance (Panayides and Wiedmer, 2011). Therefore, efficiency of fleet deployment in global shipping networks becomes more important for shipping alliances, and connectivity improvement between

trunk routes and feeder routes will lower costs of vessel operation. Actually, even for global liner shipping companies it is hard to cover all shipping routes in the world as similar to other competitors which have strength in a regional route as shown in Table 4.

In DDA negotiation, EC asserted liberalization of maritime transport and listed Maritime Commitment Schedule including international maritime transport services, maritime auxiliary services, port services, repositioning of empty containers and feeder services of foreign trade cargoes. The Maritime Commitment Schedule of EC in DDA negotiation becomes a basis of maritime commitment of European countries in TISA.

Table 3. Ranks of Global Liner Shipping Companies(2012)

Rank	Company	Nationality	TISA participation	1,000 TEU
1	Maersk	Denmark	Participant	143,269
2	MSC	Swiss	Participant	129,870
3	CMA-CGM	France	Participant	76,247
4	COSCO	China	Non	47,752
5	China Shipping	China	Non	42,623
6	Evergreen	U.K.	Participant	34,701
7	Hapag-Lloyd	Germany	Participant	34,153
8	Hanjin	Korea	Participant	28,856
9	NYK	Japan	Participant	27,456
10	K Line	Japan	Participant	24,408
11	Mitsui Osk	Japan	Participant	23,383
12	OOCL	Japan	Participant	18,797
13	Yangming	China (Taiwan)	Participant	
14	NOL/APL	Singapore	Participant	14,441
15	Hamburg-Sud	Germany	Participant	14,297
16	UASC	UAE	Non	12,374
17	PIL	Singapore	Non	11,127
18	WanHai	China (Taiwan)	Non	526
19	ZIM	Israel	Participant	486
20	HMM	Korea	Participant	267

Source: HIS Fairplay (2012).

Table 4. Geographic coverage of liner services by Shipping Companies (2010)

Company/major route	MT	TA	TP	ME	AF	SA	AUS	IA	IE	Services	Share of service (%)
Maersk		5	12	53	58	42	16	35	43	264	15.3
MSC		9	6	23	28	29	8	12	58	173	10.1
CMA-CGM		8	9	36	39	30	14	32	30	198	11.5
COSCO		2	17	14	7	-	3	30	5	78	4.5
Evergreen		1	13	14	2	8	4	34	10	86	5.0
Hapag-Lloyd	1	14	12	14	6	15	12	2	4	80	4.7
Hanjin		3	18	21	1	1	4	15	0	63	3.7
NYK	1	5	10	23	28	29	8	12	58	173	3.7
K Line		2	13	17	3	4	4	14	3	60	3.5
OOCL	1	7	10	15			7	24	4	68	4.0
Yangming		2	16	19			1	21	1	60	3.5
Hamburg-Sud		3		4	2	27	10		5	53	3.1
ZIM	1	3	5	12	10	17	2	11	12	73	4.2
HMM	1	2	17	16	1		6	9	1	53	3.1

Source: Panayides and Wiedmer (2011).

Note: 1) MT: Multitrade; TA: Trans-Atlantic; TP: Trans-Pacific; ME: Middle East, South Asia, Indian Ocean; AF: Africa; SA: South America, Caribbean; AUS: Australia, New Zealand, South Pacific Islands; IA: Intra Asia; IE: Intra Europe, Intra Mediterranean.

2) The number of geographical coverage means the number of services in a route.

3. General Issues on Maritime Transport and Response of member countries

3.1 Draft of Norway

Norway addressed its opinion on maritime transport in May 2012 in TISA negotiation. It stressed the importance of maritime transport services moving about 90% of global trade goods and classified maritime transport services into three main services: international maritime transport services, maritime auxiliary services and port services. It also adds other issues of feeder services related with international maritime transport services, coastal shipping of transport equipments such as empty containers, and pushing and towing services, and maritime offshore services besides the issue in GATS agreement.

In June 2013 Norway circulated the draft of maritime service Section including scope, definitions, non-discriminatory market access, access to services, recognition of vessel certificates, and identification of documents, entry and transit of seafarers (Norway, 2013). Differently from the issues of GATS, the Norway draft of maritime service Section includes

feeder services, coastal shipping of transport equipment and maritime offshore services.

3.1.1 Scope

In the Scope of the draft, Norway emphasizes feeder services and maritime offshore services. Due to its strong competitiveness in maritime offshore industries such as pushing and towing oil rigs and transportation of marine structures, Norway separates maritime offshore industries from domestic coastal shipping services. Norway seems to intend to develop new service markets of maritime offshore services through addressing maritime offshore activities.

3.1.2 Definition

Norway interprets broadly international maritime transport services as the supply of international maritime transport of cargo and passengers, including door to door or multi-modal transport operations. Multi-modal transport services in accordance with containerization since the 1950s and adoption of container system after the 1960s have changed liner shipping networks both through developing feeder and spoke shipping networks and through diversifying liner shipping routes. European countries have cultivated multi-modal transport services, promoted freight forwarding business and built logistics facilities around port and inland areas.

Introducing a definition of feeder services, European countries represented by Norway try to liberalize feeder services which are directly related with international maritime transport services. However, feeder services in a marine territory in Asia and American Continent are considered to belong to cabotage activities.

Maritime offshore services in which Norway has strength is defined newly as a marine transport between ports and other vessels, floating or fixed installations or any other points of service situated offshore, or between any such points of service situated offshore, and domestic pushing and towing services, including anchor handling, connected to exploration and exploitation of natural resources.

3.1.3 Non-Discriminatory Market Access

The articles of non-discriminatory market access include the statements of unrestricted market access, termination of cargo sharing agreement, commercial presence, abolishment of unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport. Moreover Norway proposes the permission of transportation of transport equipment without payment and feeder service between the ports of a member country by the service suppliers of other number country.

3.1.4 Access to Services

The articles of access to services describe access rights of service suppliers of member countries to port services such as pushing and towing, maritime auxiliary services, customs facilities, and berths and facilities for loading and unloading. It also contains the clause of prohibition of free contract prevention to international maritime transport services suppliers.

3.1.5 Recognition of certifications and documents on vessels

The articles on recognition of certifications and documents on vessels include recognition of nationality of vessels, tonnage certificate and other relevant documents of the vessel.

3.1.6 Recognition of certifications and entry procedure on seafarers

The articles on recognition of certifications and entry procedure on seafarers include recognition of the valid identification documents of seafarers and crews, admission of temporary shore leave, immigration admission for entry and exit of seafarers and crews, permission of medical observation or treatment of an illness, and other crew related issues.

3.2 Major Responses of Participants

3.2.1 Scope and Definition

Canada points the necessity of transparency of ship registration, urges participants to take commitment on ship registration and proposes the usage of Maritime Model Schedule (MMS) of GATS. Japan asserts that feeder services and maritime offshore services that Norway suggests are belonging to cabotage. Mexico also considers maritime offshore services as a service of cabotage. However, Panama, a main country of flag of convenience agrees the necessity of definition of maritime offshore services and proposes the clarification of definition on maritime offshore services. Panama urges to enlarge the definition of a port in order to include inland sites, water areas, structures, equipment and facilities for the purpose of shelter, repair, loading and discharging of cargo, embarking and disembarking of passengers, or for other activities connected with water-borne commerce.

3.2.2 Non-Discriminatory Market Access

Mexico insists that the issues of non-discriminatory are related with cabotage. Canada addresses concerns on conflict between commercial international maritime transport services of other members within Canadian domestic marine territory with cabotage. Nevertheless, Panama requests the expansionary definition of transportation of transport

equipment in order to include transportation of a) empty cargo vans, empty lift vans, and empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; and b) Empty instruments of international traffic, including containers, if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and Stevedoring equipment and material.

3.2.3 Access to Services

Mexico insists that these issues are related with cabotage. Canada points that these are not at commitment of GATS and requests that access to services such pilotage and pushing and towing services does not apply to illegal fishing vessels.

4. Cabotage Issues and Responses of major participants

Norway proposed a new way of defining freer supply of international maritime transport services on a global level. It has good implications for more efficient transport services for both suppliers and shippers. However, it has problems for some countries with less competitive maritime industries.

As to the proposal of Norway, we focus some issues related with international maritime transport services, feeder services, transport of equipment and maritime offshore services, particularly related with cabotage. In fact, they are not new issues, but permanent ones as they are directly related with respective countries' various national interests. While European participants developed single shipping market through establishment of regulation adopting the right on maritime cabotage by a member of EC in the early 1990s, other participants such as Northern American countries sustain the strict cabotage rule.

We examine responses from the comments of Canada, Japan and the United States.

4.1 Legal Development of Maritime Cabotage in Europe

EC adopted Council Regulation EEC 3577/92 applying the principle of freedom to provide services to maritime services within member states of EC. The concept of cabotage is defined to be the right to provide maritime transport services between two points within one and the same state (Power, 1994). From the definition of cabotage, it is divided into the three services in Europe: mainland cabotage; off-shore supply services; and island cabotage.⁴⁾

4) We could find regional cabotage in maritime or air transport services (Hong, 1992).

Table 5. Types of maritime cabotage in Europe

Type	Definition
Mainland cabotage	The carriage of goods and passengers by sea between ports situated on the mainland of the main territory of one and the same member states without calls at islands
Off-shore supply services	The carriage of goods and passengers by sea between any port in a member state and installations or structures situated on the continental shelf of that member states
Island cabotage	The carriage of goods and passengers by sea between: ports situated on the mainland and on one or more of the island of one and the same member states, ports situated on the island of one and the same member states

Source: Power (1994).

However within the Mediterranean and along the coast of Spain, Portugal and France, the regulation of EEC 3577/92 is exempted as in the following:

- cruise services, until 1 January 1995,
- transport strategic goods (oil, oil products and drinking water), until 1 January 1997
- services bt ships smaller than 650gt, until 1 January 1998
- regulation passenger and ferry services, until 1 January 1999 (Power, 1994).

In addition island cabotage in the Mediterranean and cabotage with regard to the archipelagic regions such as Canary, Azores and Madeira Ceuta was temporarily exempted from the implementation of Council Regulation EEC 3577/92 1 January 1999. For the regular passenger and ferry services in Greece cabotage of Council Regulation EEC 3577/92 was exempted until 1 January 2004.

Therefore the feeder maritime services which mean the pre- and onward transportation by sea, operated by international maritime transport services suppliers between ports located in a member states for the purpose of international cargo, including containerised cargo, en route to a destination, or from a port of shipment, outside the territory of that Party as in the drafts of maritime services in TISA in 2012 by Greece are separated from the traditional maritime cabotage within EC member states after the full implementation of Council Regulation EEC 3577/92 in 2004.

4.2 The United States

The United States has maintained a strict cabotage policy. However, it has shown a little higher level of offer that was maintained at DDA and Korea-US FTA. The United Sates may offer more up-graded offers, that is, more liberalized offers in the future trade and service negotiations.⁵⁾

A new offer of allowing ship maintenance and repair and maritime auxiliary services is an advanced step from the US cabotage rule. It is moving from the existing position to a more liberal to get a balanced approach with global neighbours. As for maritime transport services, land side transport services such as loading and cargo handling services are included on a reciprocal basis.⁶⁾ Especially the US government considers that land side aspects of transport operations are essential for security reasons and strictly limited for national operators.

Traditionally, the United States has a strict cabotage rule by Jones Act and Passenger Vessel Service Act of 1988 (Mak *et al.*, 2010; Zheng *et al.*, 2013). Jones Act requires the US ship registry of three conditions: ship built at the American dock; ship owner, American citizen; seafarers, more than two thirds of crew. The US government's rationale for cabotage is clear for its national security reasons, employment of US citizens and their welfare. Foreign vessels cannot operate in the US seas because they do not pay various taxes and insurances for seafarers. The US ships cannot compete with cheap ships of low cost built ships and cheap seafarers of low income countries without full insurance and welfare.

When national emergency occurs, US citizens can fight for their people and the American seafarers are the fundamental backbone of the US Navy. The American strong Navy is possible with healthy American seafarers. Even though foreign built ships and foreign seafarers may be cheap and help them get competitiveness for American maritime operators, the US government maintains strict cabotage for long-term national security. As the American government maintains strict cabotage, there are no problems occurring from coastal shipping such as feeder services and maritime offshore services.

4.3 Canada

Canada maintains an open international maritime transport services sector and supports the unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis. Canada generally supports the scope of liberalisation set out in Norway's draft paper, in particular, the non-discriminatory market access and access to services provisions. Its maritime policy is against any cargo sharing agreements.⁷⁾

As for feeder services, Canada points out that the proposed definition of feeder services is structured so as not to capture inland waterways, a segment of feeder services that is commercially significant. Canada recommends that reference to "inland waterways" should be included to extend the feeder services. As to areas of the European feeding

5) Interviews with Research Fellow at the Korea Institute of International Economic Policy (August, 2013).

6) Korean Government (2012).

7) Canadian Government (2013).

market that would otherwise not be covered without inland waterways. Canada does not put any comment except this leg of transport in feeder services in international maritime transport services.

However, Canada strictly defines cabotage to be all commercial maritime activities in the domestic waters. In Canada, any marine activity of a commercial nature undertaken from a vessel in domestic waters is considered to be cabotage whether there is a transportation component or not. Such maritime services as pushing and towing services including anchor handling (where done exclusively within domestic waters) and servicing offshore exploration and exploitation of natural resources are considered by Canada to be a type of cabotage service.

Feeder services (when international cargo is offloaded at a Canadian port, then reloaded onto another vessel for onward transport to another Canadian port) are considered to be the domestic movement of cargo and fall within the definition of cabotage. This concern would also extend to the repositioning of empty containers. Canada's position is to make sure the legal certainty the foremost goal of TISA but seems not to support the Norwegian proposal on feeder services if other TISA members view these services as a type of cabotage service.

4.4 Japan

Japan as a strong maritime nation supports the idea of establishing new provisions based on Maritime Model Schedule. And yet, Japan takes a conservative position on new legal arrangements on international maritime transport. Even though Japanese maritime industries' position in the global market is strong and at top rank in maritime industry organization and technology, it does not want to reshuffle structure of maritime transport industries abruptly.⁸⁾

Japanese description on the new approach is simple. The global adjustment of industry structure should be based on the full agreement and balance of most participant parties. As some RGF in WTO/DDA countries have not even achieved the MMS level of liberalization, it may be too ambitious to aim at a level higher than the MMS. Therefore, Japan considers appropriate that TISA should try to aim at achieving the MMS level first.

Japan considers feeder services and maritime offshore services as cabotage. As Japan is an island country with strong economy, domestic coastal shipping is essential for its national economic security and economic development between islands. Even though feeder services are generally open, they are still in the scope of coastal shipping and they should be controlled by Japanese maritime authorities. Japan's position is that these coastal shipping services should be excluded from the scope.

8) Japanese Government (2013a).

Japan shows keen interests in maritime offshore services. It raises a question to Norway whether any commercial interests have been shown from maritime companies. Actually as Japan has no strong maritime offshore companies, it is logical to raise questions in order to find new breakthrough for their maritime industries, especially maritime offshore industries.

Japan maritime authorities have maintained reciprocal policy in the maritime sector. Oceangoing ship operators of another Party may be restricted or prohibited from entering Japanese ports or from loading and unloading cargoes in Japan in cases where Japanese oceangoing ship operators are prejudiced by that Party.⁹⁾

Nationality requirement applies to the supply of international maritime transport services (including services of passenger transportation and freight transportation) through establishment of a registered company operating a fleet flying the flag of Japan. “Nationality requirement” means that the ship must be owned by a Japanese national, or a company established under the laws and regulations of Japan, of which all the representatives and not less than two-thirds of the executives administering the affairs are Japanese nationals. Japanese ship register guidelines are quite strict including shipping management.

Unless otherwise specified in laws and regulations of Japan, or international agreements to which Japan is a party, ships not flying the Japanese flag are prohibited from entering ports in Japan which are not open to foreign commerce and from carrying cargoes or passengers between Japanese ports.¹⁰⁾

Japan has no regulations on maritime offshore services. However, this sector is regarded as coastal shipping, and it may be controlled by Japanese maritime authorities as cabotage.

4.5 Implications

As we have seen coastal shipping policies of the leading shipping countries, cabotage, the domestic coastal shipping will remain in main issues of a international maritime agreement, despite the opening of the international shipping market. Each country has the rationale to maintain cabotage out of various reasons, among them, national security, welfare of citizens, employment and harmonization of economic activities between transport sectors.

Korea has maintained a liberal maritime policy since it entered the OECD in 1996. The Korean government liberalized the maritime sector of international maritime services at that time and later adopted allowing Korean international maritime service suppliers to

9) Japan’s Law Concerning Special Measures against Unfavorable Treatment to Japanese Oceangoing Ship Operators by Foreign Government (Law No. 60 of 1977).

10) Japan’s Ship Law (Law No. 46 of 1899), Article 1 and 3 (Japanese Government. 2013b).

service some legs of coastal container shipping in order to achieve two purposes, that is, to induce global liner shipping operators and vitalize port operations of Gwangyang port.

As for feeder services by foreign international maritime service suppliers, there is some restrictions within Korean water. In case of transport of equipment such as empty containers by foreign international maritime service suppliers, two legs are allowed temporarily for the policy objectives just mentioned above. As the competition between coastal shipping and trucking is severe in Korea, some Korean coastal shipping operators lost their interests in domestic container shipping and left the sector.

As the market size of Korean coastal shipping is comparatively small, coastal shipping operators are seeking other emerging coastal shipping markets of neighboring countries. As it is known that Japanese coastal shipping market is closed to foreign operators, they are seeking coastal shipping market of South-east Asian countries.

As for maritime offshore services, Korean government has a policy position of reservation because such maritime offshore market has not opened yet. It has no clear regulation on this new sector of maritime offshore services. It is recommended that the government define maritime offshore services, considering future development of offshore oil reserves in the continental shelf surrounding Korean peninsula.

5. Conclusion

Since the introduction of container system in shipping in the 1960s, maritime transport industry has shown incessant evolution in shipping, port and inland services. Nowadays, door to door transportation and multimodal transportation connect directly and conveniently a shipper in a country to customers in the world. International negotiation agreements such as GATT and GATS introduced in the 1990s promote maritime transport services on one hand and on the other hand enhance competition between service suppliers.

In TISA, some participants are competitive in global shipping market and are eager to reach a better agreement to legal certainty for shipping companies. Thanks to information technology and innovative organizations of shipping business, the international shipping has been connected more closely into similar business types on the global level. At the same time, TISA has begun out of the accumulated data and information of former shipping agreements, it is expected that the representatives may reach a more reasonable agreement on shipping service trade. In this negotiation, there are many European countries such as Norway, Greece, Denmark that have strength in the shipping industry and Asian countries that have a few shipping companies competing with European and other countries' shipping companies. Though European countries pushed by the integration of shipping market in Europe are hoping to liberalise a part of domestic shipping services, Asian countries and

American countries pose against this trend.

Hence one of new findings in this paper is to clarify the views on cabotage issues of European countries and other participants in TISA. While European countries are eager to liberalise international feeder services within a member states and other cabotage related services such as repositioning of empty containers within a member states, other countries including USA, Canada and Japan try to protect cabotage related services within its own maritime territory. Academic achievement of this paper would be the literature examination that cabotage issues will be a main agendas in a international maritime agreement and a few progress in liberalising maritime auxiliary services and port related services can be agreed by the participants of TISA in the near future.

Therefore, TISA could conclude significant progress of liberalisation of service supply and access to the maritime industry. Especially, we could find policy change of the United States on inland stevedoring services. In addition from the view of service trade of Korea, maritime transport is a vital part of export of Korea. Hence, we could recommend policy makers some policy agendas. First, it is necessary to introduce and promote a new maritime business such as maritime offshore services and maritime freight forwarding services. Second, the database of maritime transport industry of major shipping countries and the concrete concept of the maritime market will be helpful to position a right strategy and tactic of Korea in international negotiations. Third, development of expertise on international business law and new guidelines of maritime service negotiations is imperative to improve capacity of negotiation and agreement in international discussion.

References

- Canada Government. 2013. *Transport Canada Questions/Comments on Norway's International Maritime Transport Services proposed Schedule of Commitments*.
- Chanda, R. 2003. Social Services and the GATS: Key Issues and Concerns, *World Development*, 31(12), pp.1997-2011.
- European Commission. 2013a. *Negotiations for a Plurilateral Agreement on Trade in Services*.
_____. 2013b. *The Trade in Services Agreement (TISA)*.
- HIS Fairplay. 2012. *World Fleet Statistics* .
- Hong, S. 1992. Freedoms of the Air and Air Cabotage: their legal concept and problems of expanded applications, *Korea Society of Air and Space Law and Policy*, 4, 37-49.
- International Monetary Fund. 2012. *International Financial Statistics Yearbook*.
- Japan Government. 2013a. *Japan's comments regarding Maritime Transport Provisions proposed by Norway in TISA*.
- Japan Government. 2013b. *Japan's Ship Law*.
- Korea Government. 2012. *Free Trade Agreement between the Republic of Korea and the United States of America*.
- Mak, J. C. Seehey and S. Totiki. 2010. The passenger service act and America's cruise tourism industry, *Research in Transportation Economics*, 26, pp.18-26.
- Meng, Q. and S. Wang. 2011. Liner shipping shipping network design with empty container repositioning, *Transportation Research Part E*, 47, pp.695-708.
- Ministry of Justice of Korea. 2000. *GATS Guidebook*.
- Norio, K. 2010. *International Economic Law*.
- Norway Government. 2013. *TISA – Possible provisions on international maritime transport services*.
- Panama Government. 2013. *Comments from Panama*.
- Panayides, P.M. and R. Wiedme. 2011. Strategic alliances in container liner shipping, *Research in Transportation Economics*, 32, pp.25-38.
- Power, V. 1994. *EC Shipping Law*, Lloyds of London Press Ltd.
- Sauve, P. 2013. *A Plurilateral Agenda for Services? Assessing the case for a Trade in Services Agreement (TISA)*, Working Paper No 2013/29, NCCR Trade Regulation.
- Tuthill, L. 1997. The GATS and new rules for regulators, *Telecommunication Policy*, 21(9/10), pp.783-798.
- Wang, S., Q. Meng and Z. Sun. 2013. Container routing in liner shipping, *Transportation Research Part E*, 49, pp.1-7.
- World Trade Organization. 2001. *Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS)*.
- Zheng, J., Q. Meng and Z. Sun. 2013. Impact Analysis of maritime cabotage legislations on liner hub and spoke shipping network design, *European Journal of Operational Research Part, in Press*.