IL DIRITTO MARITTIMO – QUADERNI

5

Port, Maritime and Transport Law between Legacies of the Past and Modernization

Editor
Massimiliano Musi

under the patronage of

North Adriatic Sea
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BONOMO EDITORE

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www.bonomoeditore.com

Stampato presso: Bonomo Editore

Impaginazione copertina: angelo@chieco.biz

Edizione: dicembre 2018

Isbn: 978886972122-9

China's Port System Development and its Internationalisation*

ABSTRACT

The global trade is traditionally western-world oriented, thus enormous research focuses on western trade systems and ports. This carries with it the danger of neglecting developments of trade and ports elsewhere. The paper, therefore, aims to fill in this gap and discuss the port system of China, an important player in global trade, and its recent development and internalisation under the Belt and Road initiative. Since 1978 China has significantly reconstructed and opened its market. Its "Open Door" policy has led to economic growth. This paper studied changes in the ports planning, structure and governance in China in the 21st century in which China started further market reform since China joined in the WTO in 2001. China has undergone market reforms, introducing or amending trade-related laws, such as the PRC Merchant Port Act of 2003. This paper focuses on China Merchants Port Holdings, China Ocean Shipping (Group) Company (particularly COSCON and COSCO Pacific), and China Shipping Terminal Development.

The choice of these representatives is appropriate because they are the top global and international terminal operators and thus analysis on their economic activities sheds light on understanding China' ports and terminal operators. This paper finds that Chinese operators in China and Hong Kong are not as geographically diverse as other other international terminal operators. However, a striking change is occurring that China's port operators have taken internationalisation strategy, possible under the auspices of the Belt and Road Initiative, and involved in more and more ports outside China.

1. *Introduction*

Seaports play an essential role in trade and globalisation. According to UNCTAD statistics, global ports deal with over 80% of global merchandise trade in volume and more than two-thirds of trade in value (1). Having a close look at the world port volumes by region, the percentage share of Asian ports has exceeded half of the trade (in volume). As Table 1 demonstrated, in the year of 2016, 64% (in volume) of worldwide containers were handled by ports located in Asia (2).

TABLE 1: WORLD CONTAINER PORT VOLUMES BY REGION, 2016

	Volumes (Unit: TEU)	**World Shares**
Asia	446813796	64%
Europe	113831821	16%
North America	54120207	8%
Developing America	45915853	7%
Africa	27909132	4%
Oceania	11112739	2%
Total	**699703548**	**100%**

Compiled and calculated by the current authors.

Source: UNCTAD secretariat calculations, based on data from various sources (3).

* This article has been submitted to double blind peer review.

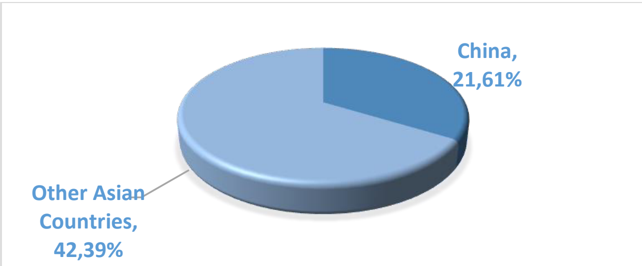
(1) UNCTAD, *Review of Maritime Transport (2017)*, Geneva, 2017, p. 61.

(2) UNCTAD, *op. cit.*, pp. 62 - 63.

(3) The sources of data include Lloyd's List Intelligence, Hofstra University, Dynamar B.V., Drewry Maritime Research, Containerisation International (up to 2014) and information published on websites of port authorities and container port terminals.

What should be noted is that, as shown in Figure 1, within the region of Asia, China has contributed 26.1% to the world containers throughput in 2016[(4)]. That is to say, China's ports have been playing a significant role in the world seaborne trade and deserve attention.

FIGURE 1: THE WORLD SHARES OF CHINA'S CONTAINER PORTS IN 2016



Compiled and calculated by the current author.
Source: data on China and relevant updates are available at UNCTAD-STAT under "maritime transport".

In addition, many scholars have explored issues and trends on containerisation, mega-ships, mega-alliances, e-commerce and digitalisation, which were largely analysed in the context of western economic development, for instance Slack [(5)] and McCalla [(6)].

However, since the late 20th century politics has shifted thrust other types of economies into the global trading system which is so dependent on contain-

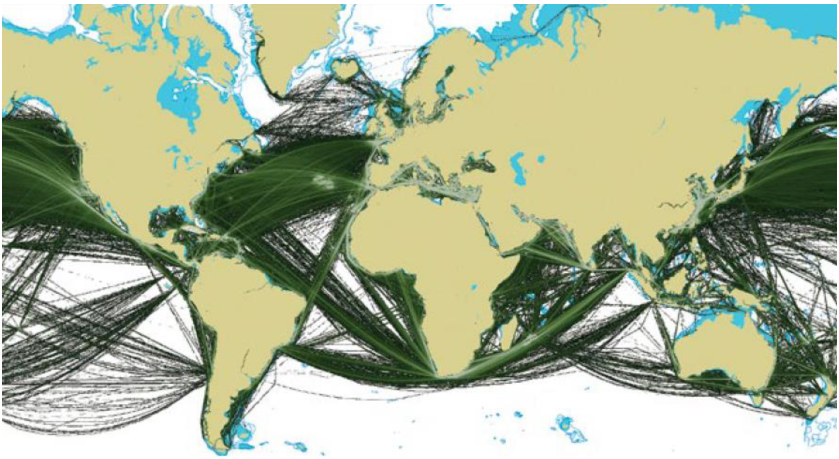
[(4)] See details and other data on China at UNCTAD STAT statistics database on individual countries.

[(5)] B. SLACK, *Corporate Realignment and the Global imperatives of Container Shipping*, in D. Prinder, R. Slack (edited by), *Shipping and Ports in the Twenty-first Century*, Abingdon-on-Thames, 2004, pp. 25 - 49.

[(6)] J. RODRIGUE, *Appropriate Models of Port Governance: Lessons from the Port Authority of New York and New Jersey*, in D. Prinder, R. Slack (edited by), *Shipping and Ports in the Twenty-first Century*, Abingdon-on-Thames, 2004, pp. 63 - 82.

erisation as a transport mode. The collapse of the Soviet Union socialism, especially in the Central and East European contexts, affected the majority of communism countries but China. Thanks to DENG Xiaoping's Open Door policy, a significant number of seaborne trade starts from or ends in China (Figure 2), which reflected that China has been the world's factory in the late 20th and early 21st centuries. Consequently, the ports, including container terminals grew up rapidly along with the development of China's export and import of goods.

FIGURE 2: DENSITY MAP OF CONTAINER SHIP MOVEMENTS



Source: prepared for UNCTAD by Marine Traffic [7]
Data depict container ship movements in 2016.

Given the rising role of China in international seaborne trade (Figure 2) and the seaport industry (Table 2), an over-narrow focus on Western-led trading systems carries with it the danger of neglecting these important developments elsewhere in the global economy. This paper, therefore, aims to counteract that neglect. Namely, this paper focuses on China, the country which has become the prime focus of world maritime activity during the first decade of the 21st century

[7] UNCTAD, *op. cit.*, p. 101.

and examines China's ports and their latest developments in the second decade of this century.

In spite that a broad overview of this development had been conducted in the 1990s [8] and in the 2000s [9], there has been little research on the latest development of ports in China and its unprecedented tendency in overseas port and logistics networks. Thus, there is now a pressing need to go beyond this conspectus and examine the domestic and international aspects of sea-land development. Much of this new economic activity has been underpinned by the introduction of free port zones (for instance the use of "dry port" in the hinterland in China) and the internationalisation strategy influenced by President Xi Jinping's Belt and Road Initiative.

This paper contributes to this objective primarily by studying the latest changes in the structure, networks and activities of the key port groups in China. The analysis in this paper focuses on port-related activities conducted by China Merchants Port Holdings, China COSCO Shipping Corporation Limited [10] (which was established in 2015 by restructuring during August to December 2015 and eventually merge of COSCO Group [11] and China Shipping Group). It is noting that, due to China's political regime, those companies who are active in the port sector in China are state-owned companies and engage effectively with the market to the substantial benefit of the national economy.

TABLE 2: WORLD TOP 40 CONTAINER TERMINALS IN 2016

RANK	PORT	COUNTRY	2016 (THROUGH-PUT)	2015-2016 (% CHANGE)

(8) E. FRANKEL, *China's Maritime Developments*, in *Maritime Policy & Management*, 1998(25), pp. 235 - 249.

(9) C. COMTOIS, P.J. RIMMER, *China's Competitive Push for Global Trade*, in D. Prinder, R. Slack, *Shipping and Ports in the Twenty-first Century*, Abingdon-on-Thames, 2004, pp. 40 - 62.

(10) Information on China COSCO Shipping Corporation Ltd collected from fieldwork in the support of COSCO Shanghai in July 2017.

(11) China Ocean Shipping (Group) Company (COSCO or COSCO Group) is a Chinese state-owned shipping and logistics services supplier company.

			(UNIT: 1000 TEU)	
1	Shanghai	China	37,315	1.6
2	Singapore	Singapore	30,930	-0.1
3	Shenzhen	China	23,980	-0.9
4	Ningbo	China	21,565	4.7
5	Hong Kong	HK, China	19,580	-2.7
6	Busan	South Korea	19,378	0.4
7	Guang-zhou	China	18,859	8.0
8	Qingdao	China	18,050	3.3
9	Dubai	UAE	14,772	-5.3
10	Tianjin	China	14,523	2.9
11	Port Ke-lang	Malaysia	13,167	10.7
12	Rotterdam	Netherlands	12,385	1.2
13	Kaohsiung	Taiwan Prov-ince of China	10,460	1.9
14	Antwerp	Belgium	10,037	4.0
15	Xiamen	China	9,614	4.7
16	Dalian	China	9,584	1.4
17	Hamburg	Germany	8,900	0.8
18	Los Ange-les	USA	8,857	8.5
19	Tanjung Pelepas	Malaysia	8,029	-8.8
20	Cat Lai	Viet Nam	7,547	10.0
21	Laem Cha-bang	Thailand	7,227	6.0
22	Long Beach	USA	6,775	-5.8
23	New York	USA	6,250	-1.9

24	Yingkou	China	6,087	2.8
25	Colombo	Sri Lanka	5,735	10.6
26	Tanjung Priok	Indonesia	5,515	6.0
27	Bremerha-ven	Germany	5,489	-1.0
28	Suzhou	China	5,479	7.4
29	Lianyun-gang	China	4,829	-3.6
30	Algeciras	Spain	4,745	5.2
31	Valencia	Spain	4,660	-0.2
32	Tokyo	Japan	4,653	0.6
33	Jawaharlal Nehru	India	4,475	0.2
34	Manila	Philippines	4,427	7.1
35	Jeddah	Saudi Arabia	3,997	-4.6
36	Piraeus	Greece	3,750	14.1
37	Felixstowe	UK	3,745	-7.4
38	Savannah	USA	3,645	-2.5
39	Seattle	USA	3,529	0.0
40	Santos	Brazil	3,564	-5.6
TOTAL			**416,108**	**1.7**

Compiled and calculated by the current author.

Source: UNCTAD secretariat calculations, based on data from Drewry Maritime Research [12].

TABLE 3: AVERAGE TIME IN PORT: BULK CARRIERS, 2016

COUNTRY	TOTAL ARRIVALS	DAYS IN PORT
CHINA	41908	2.60
JAPAN	32239	1.08
USA	14104	1.88

[12] DREWRY MARITIME RESEARCH, *Diminishing Return? Ports and Terminals*, in *Spotlight Briefing*, February, 2016.

AUSTRALIA	12840	2.12
CANADA	11278	1.50
INDIA	8885	2.83
BRAZIL	7814	2.70
INDONESIA	7338	3.48
SOUTH KOREA	5987	2.89
RUSSIA	4579	3.40
WORLD TOTAL	213497	2.72

Compiled by the current authors. The available data which the authors used were that of the individual country but not an individual port.

Note: Average time in port is equivalent to the average of median per port per country.

Source: Marine Traffic, 2017 (13).

2. *The ports in China: three clusters of ports*

China has become the world's largest country in relation to the seaport sector (Tables 2 and 3). By the end of 2017, there have been 27,578 berths for production ports in China, and the cargo throughput of the ports was 14.07 billion tons and the container throughput was 238 million TEU (14). As Table 2 shows, among the top 40 container ports worldwide in 2016, 10 of which are ports in China; what is something new is 3 of the top 40 ports are overseas ports with China's involvement - namely Colombo, Piraeus and Long Beach.

(13) UNCTAD, Review of Maritime Transport (2017), p. 70, Table 4.7 on average time in port in 2016.

(14) PRC Ministry of Transport, Statistical Bulletin on the Development of Transportation Industry in 2017.

FIGURE 3: SELECTED SEAPORTS ALONG CHINA'S COAST

The dynamism of the system is demonstrated by the increase of in port rankings, as well as by a reducing of Hong Kong's domination (see Table 2). Geographically, the container port system is composed of three port ranges [15]: the northern range around the Bohai Rim, the central range centred on the Yangtze River Delta, and the southern range comprising a cluster of ports in the Pearl River Delta (Figure 3).

In Bohai Rim region, there are three leading ports: Dalian, Tianjin and Qingdao which attracted a number of foreign investors [16]. For instance, International and domestic container terminal operations in Dalian are managed by a subsidiary of the Maritime and Port Authority of Singapore (PSA) [17]. Sea-Land Orient (Tianjin) Terminals, a joint venture between CSX World Terminals and Pacific Ports, operates four container berths in Tianjin.

Qingdao also signed an agreement with P&O Ports in 2000 and founded a joint venture company to develop and operate a new container terminal on a 30-year concession.

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(15) J. RODRIGUE, T. NOTTEBOOM, *Port Regionalisation*, in *Maritime Policy & Management*, 2005, pp. 297 – 313.

(16) C. COMTOIS, *op. cit.*, p. 42.

(17) S. CASS, *The Chinese dragon roars on*, in *Cargo Systems Supplement*, 2001, pp. 9 - 60.

However, their relative proximity has led to the concentration of traffic on them and, therefore, to a negligible role for small or medium-sized container ports. Currently, both Liaoning province, in which Dalian is located, and Shandong province, in which Qingdao is located, have started restructuring of port holding companies within each province. Take the Shandong Provincial Ports Reform plan as an example (18). The integration of the three ports in Shangdong province in the Bohai Rim aim to replace disorderly competition with effective collaboration, and promote the construction of the four major port holding groups of "Qingdao Port", "Bohai Bay Port", "Yantai Port" and "Rizhao Port", and establishing the "Shandong Port Investment Holding Group" in due course (19).

The authors have reached three findings through the fieldwork conducted in Yingkou, Dalian, Tianjin and Qingdao in 2016 and 2017: first, the reason and motivations for the corporate restructuring is to address existing problems of repeated construction of port facilities and vicious competition among the ports; second, the plan is the municipal and the provincial State-owned Assets Management Committees (SOAMCs) would purchase shares of the port holding companies within each province and forms a new holding company; third, the aim of the proposed new holding company is to optimize the port operations among the regional ports and avoid repeated port-related investment and vicious competition, and eventual promote cooperation among the regional ports. It should be noted that the proposed restructuring plan in this region can reach the ports located in the same province, namely Liaoning, Tianjin (20) and Shandong, but it has little effect on ports which is in proximity but located in another province of the region.

The central port range is around Hangzhou Bay. Shanghai is on the northern side of the river mouth located in Shanghai City (province equivalent), and Ningbo on the southern side of the river mouth which is part of Zhejiang province. In addition, there is a cluster of isles, Zhoushan archipelagos in Hangzhou

(18) XINHUA (official media of the Chinese government), Shandong: integrating the port to take a new step in the construction of a strong marine province, published on 3 May 2018.

(19) XINHUA, *op. cit.*

(20) Tianjin is a special administrative city, equivalent to a province. Its administrative role and hierarchy is similar to Washington DC and states in the USA.

Bay and geographically between Shanghai and Ningbo and administratively part of Zhejiang province. Because megatrends of vessels and depth problems are now limiting hub development of Shanghai port, Shanghai International Port Group (SIPG) (21) has secured approval from the Chinese central government to construct deep-water terminals on the Yangshan Islands which is part of Zhoushan City of Zhejiang province (22).

Ningbo, meanwhile, the world 4th biggest container port (see Table 2), has been approved by the Chinese central government to merge with Zhoushan to a new port holding company "Ningbo-Zhoushan Port Group" in 2017 (23). Ningbo has also attracted foreign interest and formed a joint venture with Hong Kong-based Hutchison Port Holdings (HPH), to begin construction of new container terminals.

It is worthwhile to note that the expansion of facilities at both Shanghai and Ningbo is unique and unprecedented in China because of a signal of the magnitude of the expected traffic growth in the Yangzi River delta. Zhoushan archipelagos under the administration of Zhoushan City of Zhejiang province were merged by Shanghai and Ningbo to form Shanghai's Yangshan deep-water terminals and Ningbo-Zhoushan port groups, respectively. That is to say, the restructuring of the port holding companies in this region has gone beyond the provincial scope of administration and initiated and approved by the Chinese central government, besides the municipal and provincial governments.

In the fieldwork conducted by the authors in 2017 in Ningbo port, the authors have reached three findings. First, Zhejiang Province Seaports Group (24) owns the shares of Ningbo-Zhoushan Port Group and many other ports in Zhejiang province. Second, free trade zone has been introduced in Shanghai and Zhejiang's Suzhou port which is in Jiangsu province. Jiangsu also introduced similar restructuring of the ports in its province and formed Jiangsu Province Ports Group in May 2017 (25).

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(21) Shanghai International Port Group, Two Container Terminals in Yangshan have been opened and further work is being carried out. Information collected from SIPG.

(22) Shanghai Yangshan Deepwater Port (*ie.* Container Terminal).

(23) Information collected from NZP.

(24) Information collected from NZP.

(25) NZP, *op. cit.*

Third, the railway and motorways have been built and connected to the port operational areas to facilitate multimodal transport. Fourth, dry ports have been promoted and introduced, together with the free trade zone in this region. Suzhou port (Table 2, world 28th container port) of Zhejiang province, in spite that it is a river port with domestic waterways, has been used as a "dry port". For instance containerised goods may complete and clear customs procedures in Suzhou which is located in the hinterland of China and sealed by the customs authority in Suzhou; consequently, the goods can be sent to Shanghai or Ningbo by rail or road without further export and import procedures.

The southern range of ports is led by three ports - Shenzhen, Hong Kong, Guangzhou and Xiamen. This region was and still is the most liberal in China, especially before the launch of free trade zone in Pudong, Shanghai in 2013. Hong Kong used to be pre-eminent in this region, leading other port cities, before 2000; nerveless, Shenzhen has suppressed Hong Kong in terms of cargo throughput in 2015 and 2016 (Table 2) and has demonstrated competitive advantages over Hong Kong (26). With its strategic location in the south, Shenzhen and Hong Kong which are geographically next to each other secure a large volume of trans-shipment traffic, and thus became prosperous owe to its proximately of Guangdong province in which export-oriented foreign investments and the manufacturing and industrial sector have been active since the 1970s (27). These ports have built their success on two factors: the geographical strategic location for carriage of goods produced in hinterland province of China and trade liberalisation led by Shenzhen - special administrative zone, and the trade performance of Guangdong Province.

Shenzhen's economic prosperity and significance are deeply rooted in its geographical nature and more importantly its liberalisation. In pearls river delta, the deepwater ports are on the eastern side, namely Shenzhen and Hong Kong; the ports in the western delta are complementary, such as Macau and Zhuhai, because they are not accessible to large container ships and serve as feeder ports

(26) X. TIAN, L. LIU, S. WANG, *Evolving Competition between Hong Kong and Shenzhen Ports*, in *Maritime Policy & Management*, 2015, 8, pp. 729 - 745.

(27) P.J. RIMMER, *Hong Kong's Future as a Regional Transport Hub*, in *Canberra Papers on Strategy and Defence*, Canberra, 1992.

[28]. Shenzhen was the first "special economic zone" in China introduced in the 1970s [29], and remains pioneering in both practice and liberal ideas. In the field-work conducted by the authors in 2016 in Shenzhen and Hong Kong, it was found that the Shenzhen government and stakeholders have conducted thorough theoretical and empirical studies on the relationship between the two cities and found that Shenzhen port complements Hong Kong port. Although the impact of the two ports is negative in transhipment but complementary in direct shipment.

3. *The evolving role of COSCO Shipping in the port systems in China*

In 2010-2017 the authors conducted fieldwork in Beijing, Shanghai and Ningbo and collected the information COSCO from COSCO Shanghai. The evidence is drawn primarily from fieldwork in ports in China, with supporting information from law and trade journals, port consultants' reports and statistics databases of international organisations, mainly by UNCTAD [30] and the WTO. This paper covers the time-frame ranging from the period from 1990, a seminal period marked by further market reforms in China, then the country's increased participation in the world economy while China joined the WTO in 2001, to 2016, the most recent port throughput data available. In addition, COSCO Group and China Shipping Group has merged in 2015 and formed COSCO Shipping Group. Thus, in this paper, COSCO Shipping Group consists of former COSCO Group and former China Shipping Group.

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(28) J.J.X. WANG, B. SLACK, *The Evolution of a Regional Port System: the Pearl River Delta*, in *The Journal of Transport Geography*, 2000, 8, pp. 263 - 275.

(29) Shenzhen special economic zone undertook market economy paradigm in a socialist country which was unprecedented and revolutionary in the decade that communist parties in the Soviet Union advocated only central planned paradigm.

(30) Data acquired from UNCTAD STAT database.

3.1. *Early stage development of China's ports involving COSCO Group*

In the mid-1950s, Chairman Mao Zedong put forward the idea of establishing and developing China's ocean shipping fleet. In 1958, the Ocean Shipping Bureau was founded under the Ministry of Transport with a branch office in Guangzhou. Meanwhile, then Premier Zhou Enlai authorised the procurement of oceangoing ships from Greece with foreign exchange earnings which were few then. The process of establishing COSCO had accelerated.

Eventually, China Ocean Shipping Company (COSCO) was founded on 27 April 1961 as the first international ocean shipping company of the PRC which mainly conducted shipping cooperation with other socialistic countries, such as Poland, Czechoslovakia and some other countries. At that time the company's organisation was based on domestic ports from Dalian to Guangzhou, with an ocean-going merchant fleet comprising only 20 ships aggregating 196,300 dwt and calling at only 13 foreign ports (31).

The company was located in Beijing in the former building of the Ministry of Communications then, and the Guangzhou Branch which served the Pearl River delta. From its location, it mirrored the central planning paradigm undertaken by the socialist countries and its close relationship with the Ministry of Transport then. Subsequently, COSCO established the Shanghai Branch on 1 April 1964 to cover Yangzi river delta and the Tianjin Branch on 1 October 1970 which run shipping routes from Tianjin to Europe and Japan. Pursuing the central planning paradigm undertook by China then, for almost 30 years China's shipping planners worked consistently to establish COSCO as a maritime corporation with virtual ministry status (32).

The Ministry of Transport issued the Notice on the Reestablishment of China Ocean Shipping Group in September 1972 which initiated the reestablishment of COSCO. Subsequently, by 1975 COSCO's fleet capacity surpassed "five million" deadweight, indicating an average annual increase of one million deadweights. This fact immediately attracted the attention of the international

(31) C.K. LEUNG, *Shipping and Port Development for Modernisation*, in E.K.Y. CHEN, S.S.K. CHIN, *Development and Change in China*, Hong Kong, 1981, pp. 127 - 143.

(32) I.M. HEINE, *China's Rise to Commercial Maritime Power*, New York, 1989.

shipping community. Moreover, from 1976, COSCO founded another branch dedicated to bulk cargo transportation - the Qingdao Branch, which served the Bohai Rim.

3.2. *Transformation (1978 - 2004)*

Since 1978 China has undergone a massive restructuring. Its "Open Door" policy has led to explosive economic growth, while the introduction of market reforms and shifting from the central planning paradigm to "Socialist characteristic market economy with Chinese characteristics", injecting vitality into COSCO. Although its state-owned nature has been maintained its role also acting as a quasi-ministry had been shrinking.

On 1 January 1980, COSCO founded its subsidiary in Dalian. That is to say, COSCO had developed five powerful forces engaging in ocean shipping, namely Guangzhou, Shanghai, Qingdao, Tianjin and Dalian by the 1980s.

In light of their fleet characteristics, previous business scope and traditional services, COSCO Qingdao and COSCO Dalian were positioned as specialised companies that mainly operate bulk and tanker fleets for transporting petroleum, food, ore sand, fertiliser, steel, etc.; while COSCO Guangzhou, COSCO Shanghai and COSCO Tianjin were positioned as comprehensive companies which own various types of ships and operate by route and port based on their fleet characteristics and geographic positions, which involved container terminals in the respective ports.

Furthermore, COSCO established an overseas shipping network in Beijing as its centre, the domestic market as its basis, with a limited number of activities in four overseas regions including Europe, North America, Japan, and Southeast Asia. At that time, Hong Kong worked as its main operational port, for instance for transhipment of goods between mainland China and the overseas regions.

Since the 1990s, COSCO has employed a new strategy - diversification. For instance, it merged with some upstream and downstream companies in 1993 and renamed as China Ocean Shipping (Group) Company, covering maritime, land and air transportation, ocean shipping, ship and freight forwarding, offshore fuel supply, ship repair, labour output, real estate, import and export trade, tourism, and finance.

In light of the shift from specialisation to intensive operation and management in the shipping world, COSCO launched the second wave of reform in its fleet system and set up professional fleets in the mid-1990s. COSCO Guangzhou became a specialised company operating general and special cargo ships, while COSCO Dalian turned to a specialized tanker company. This reform impacted the port sector of China and the cargo handled in the pearly river and the Bohai Rim. Such an impact by the shipping company on the port sector was huge in that time, mainly because it was an age that China divided domestic and international trade under different laws and only traders with quota and licenses were entitled to run import and export business.

From 1999 to 2004, following China's strategy for promoting enterprises to "go global", COSCO proposed "two shifts" - "shift from a global shipping operator to a shipping-based logistics operator, and shift from transnational operations to a multinational corporation". According to this strategy, it adjusted the shipping structure, expanded the fleet size and integrated shipping-related industries by vigorously developing modern logistics and optimising onshore industries. Therefore, it tried to establish a correlative diversified operation of three key segments in shipping, logistics, and shipbuilding and repair. The latter two sectors involved actively in the ports in China, such as Shanghai and Beijing. For instance, COSCO Logistics Co. Ltd. was founded in Beijing in 2002, which symbolised a key step of COSCO in the shift from a global carrier to a shipping-based global logistics operator.

Because of China's accession to the WTO in 2001 and the Asia Financial Crisis, the Chinese government launched economic reforms and founded the State-owned Assets Supervision and Administration Commission (SASAC) (33) in 2003. Nearly half of state-owned enterprises (SOEs) were privatised through selling off in the form of stocks; COSCO was allocated to the management of

(33) The State-owned Assets Supervision and Administration Commission of the State Council (SASAC) is a special commission of the People's Republic of China, directly under the State Council.

SASAC and defined its scope of business in three areas - shipping, logistics and shipbuilding/repair. Since the RMB 10 billion mark was first exceeded in 2004, COSCO had maintained its revenue above this level for five consecutive years.

3.3. *Global development and overseas ports involving China (2005 to now)*

COSCO had a bold move in relation to its shareholding that 130 million. A shares of COSCO Shipping (SSE: 600428) were traded on the stock market in China in 2002, which announced that COSCO officially entered China's capital market. On 30 June 2005, the shares of China COSCO Holdings Company Limited (China COSCO: 1919 HK) began trading on the main board of the Hong Kong Stock Exchange. On 26 June 2007, China COSCO launched an A-share IPO at the Shanghai Stock Exchange. After Asia financial crisis of 2008, COSCO was estimated losing profit over 10 billion USD in two years in a row in 2013-2014 which faced the risk of being suspended in the stock exchange market in the following year if not making profits.

COSCO Shipping Group has sought a shift from transnational operations to a multinational corporation, and taken part in overseas ports investment and activities. In November 2008, COSCO successfully obtained the concession to operate the terminal business at the Port of Piraeus in Greece for 35 years and took over its no. 2 and 3 Terminals on 1 June 2010. The Chinese President XI Jinping inspected the Los Angeles Terminal of China Shipping during his visit to the U.S. in February 2012. These overseas ports with COSCO's involvement are initiative by President XI Jinping's Belt and Road Initiative and in particular "the 21st Century Maritime Silk Road".

What striking was on August 7 2015, 8 listed companies affiliated to COSCO and China Shipping simultaneously announced a suspension of trading, which unveiled the curtain of restructuring. This merger was approved by the State Council of China, and thus COSCO Group and China Shipping were merged as "China COSCO Shipping Corporation Limited" (COSCO Shipping) and formally established in Shanghai in February 2016. What is more interesting is, while the authors scheduled a meeting with COSCO Shanghai on 9 July 2017, COCO Shanghai postponed the meeting for a few hours because the Group officially announced takeover plan regarding OOCL. This merger has been approved by China, the EU and the US by 8 July 2018, on the condition of US CFIUS that to sell out the shares of Long Beach terminals [34].

4. *Problems and loopholes in Chinese laws on cargo handling contracts regarding ports*

Cargo and passenger carriage are the two most important operations in relation to a port. The latter has been governed by the PRC Maritime Code 1993, though with needs to update and amend after 25 years of application [35], thus this paper focuses on the former cargo carriage and the ports' role in the cargo handling operation, in particular, the rights and responsibility in the contracts on cargo handling operations.

The current PRC Maritime Code of 1993, regulations and administrative law have not well-addressed issues of the port sector and stakeholders' rights, responsibility and liability. Having considered the practice of port cargo operations and the eminent problems in the law on ports and cargo operation contracts, the current authors found that the PRC Maritime Code has not covered port-related cargo operation contracts and leave legal gaps in the current port-related activities in China.

A port is located within a territory of a country thus subject to the law of that country. Accordingly, the ports in China are governed by PRC Maritime Code of 1993 and PRC Port Act 2004 [36]. The Port Act is considered as one of the four fundamental laws of China's shipping sector, which stipulates port management system, port planning and construction, port management, port security, and liabilities on administration and management of ports [37]. Unfortunately, this Act has not stipulated rights and liability in relation to port operations.

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(34) BLOOMBERG, *Pledging to Sell Long Beach Terminal*, *COSCO Clears U.S. Hurdle on OOCL Deal*, 8 July 2018.

(35) P. GUO, *Exploring and Thinking on the Legal Nature of Cruise Contracts - on the Amendment of Passenger Transport Contracts in China's Maritime Code*, in *Faxue Law Journal* (in Chinese), 2018, 6.

(36) Port Act of 2004.

(37) Port Act of 2004.

In the process of drafting the Port Act 2004, the legislature took a thorough approach and included a standing-alone chapter within it particularly regarding the port operation contract and corresponding responsibility of the port operator. However, this draft chapter was deleted in the final version of the Act, because there was a dramatic divergence in the legislature on the legal status of the port operator.

The loophole on port cargo operation contracts used to be filled and governed by the Cargo Operation Rules of 2000 and the Domestic Waterway Freight Rules [(38)] which were issued by then the Ministry of Communications [(39)]. The Cargo Operation Rules stipulated the port cargo operation contract and the definition of the relevant parties, the termination of the contract, the operation of the cargo owner, and the rights and obligations of the port operator, and the handover of the goods. In short, it played a fundamental role in regulating rights and liability regarding port cargo operations and clarifying the rights and obligations of port operators and cargo owners. However, both Rules were repealed in 2016. As a result, port cargo operations contracts and the domestic waterway which was used to be regulated by the Ministry's rules for more than four decades are not unregulated by maritime law after 2016.

Nowadays, thus PRC Contract Act 2005 is the governing law for the port cargo operation contract, because it is interpreted as a type of contract without special rules governing it and thus governed by Contact Act 2005. Nevertheless, there are no specific provisions at this moment in this Act suiting the unique need and characteristics of port cargo operation contracts; what is more important, it is unlikely that this Act stipulates special rules on this type of contacts.

Under Contract Act 2005, the port cargo operation contract is treated as "unnamed contract". That is to say, the port-related contacts are governed by the articles on "General Principles" instead of that on "Specific Contracts". Although theoretically, the nature of a port cargo contact is "entrusted contract" which is governed by rules of "Specific Contacts" in Chapter 21 "Entrustment

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[(38)] See also administrative rules drafted according to the Rules by General Administration of Customs of PRC (Headquarters of the PRC Customs), Domestic Waterway Containerised Cargo Transportation Rules.

[(39)] The PRC Ministry of Communications has been reformed in 2008 and changed to be the Ministry of Transport.

Contract", the rules on the specific contract of entrustment contract are not applicable to the port cargo operation contracts in practice.

It should be noted that though the Port Act 2004 has been amended in 2015, the new Port Act has not addressed the issue on the port cargo operation contracts. Currently, China is undertaking preparatory works to draft a comprehensive Civil Code which has partially completed as "General Principles of Civil Law of PRC", but it is impossible that the Civil Code would stipulate special rules on port operation contracts. Therefore, this matter is being considered by the drafters of the legislature for amending the Maritime Code 1993 and possibly to state a chapter on port cargo contract [40].

5. *Conclusion*

China Ocean Shipping Company (COSCO) was founded in 1961 as the first international ocean shipping company of the PRC. COSCO Group originated from an era that China undertook the central planning paradigm in the economy and the shipping and port sectors. For almost 30 years China's shipping planners worked consistently to establish COSCO as a maritime corporation with a virtual ministry (of Transport) status.

Along with COSCO's involvement and development in China, three clusters of ports had been developed in China, namely the Bohai rim, Changjiang delta and Zhujiang delta. Recently, particularly since 2017, dramatic reforms have been led by the ports in Shanghai-Yangshan, Ningbo-Zhoushan, Qingdao and Dalian by their respective municipal and provincial SASACs. Shanghai and Zhejiang have shared deep-water ports in Zhoushan archipelagos. Accordingly, Shanghai port (SIPG) has developed deep-water container terminals at Yangshan, and Ningbo and Zhoushan ports have merged into one port holding company owned by the Zhejiang province SASAC instead of Ningbo or Zhoushan city. Similar restructuring of the port holding companies is also occurring in Shandong and Liaoning province.

(40) Port passenger contacts are governed by PRC Maritime Code now, and it is likely to be amended due to an increasing tendency of passenger carriage and cruise travel in China.

Due to China's accession to the WTO, critical changes were introduced to the port systems in China. COSCO remains a state-owned enterprise, which is owned and administered by SASAC. Meanwhile, the roles of the government and market players have been undertaken by different players, namely the port authority and the port holding company in each port. The accession to the WTO also speeded up the relevant legislation and rules on the port sector, such as the Port Act 2004.

Furthermore, cargo and passenger carriage are the two most important operations in relation to a port. The PRC Maritime Code 1993 and the Port Act 2004 and 2015 have not well addressed these the rights and liability in relation to port cargo operation contract.

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Bibliography

Books, Articles and Reports

BLOOMBERG, *Pledging to Sell Long Beach Terminal, COSCO Clears U.S. Hurdle on OOCL Deal*, 8 July 2018.

S. CASS, *The Chinese dragon roars on*, in *Cargo Systems Supplement,* 2001, pp. 9 - 60.

CHINA SHIPPING GROUP, http://en.coscoshipping.com/col/col6922/index.html.

C. COMTOIS, P.J. RIMMER, *China's Competitive Push for Global Trade*, in D PRINDER, R. SLACK, *Shipping and Ports in the Twenty-first Century*, Abingdon-on-Thames, 2004, pp. 40 - 62.

COSCO SHIPPING CORPORATION LTD, http://en.coscoshipping.com.

COSCO GROUP, http://en.coscoshipping.com/col/col6922/index.html.

DREWRY MARITIME RESEARCH, *Diminishing Return? Ports and Terminals*, in *Spotlight Briefing*. February 2016.

E. FRANKEL, *China's Maritime Developments*, in *Maritime Policy & Management*, 1998(25), pp. 235 - 249.

P. GUO, *Exploring and Thinking on the Legal Nature of Cruise Contracts - on the Amendment of Passenger Transport Contracts in China's Maritime Code*, in *Faxue Law Journal* (in Chinese), 2018, 6.

I.M. HEINE, *China's Rise to Commercial Maritime Power*, New York, 1989.

C.K. LEUNG, *Shipping and Port Development for Modernisation*, in E.K.Y. CHEN, S.S.K. CHIN, *Development and Change in China*, Hong Kong, 1981, pp. 127 - 143.

NINGBO-ZHOUSHAN PORT GROUP, http://www.portnbzs.com.cn.

P.J. RIMMER, *Hong Kong's Future as a Regional Transport Hub*, in *Canberra Papers on Strategy and Defence*, Canberra, 1992.

J. RODRIGUE, *Appropriate Models of Port Governance: lessons from the Port Authority of New York and New Jersey*, in D. PRINDER, R. SLACK (edited by), *Shipping and Ports in the Twenty-first Century*, Abingdon-on-Thames, 2004, pp. 63 - 82.

J. RODRIGUE, T. NOTTEBOOM, *Port Regionalisation*, in *Maritime Policy & Management, 2005,* pp. 297 - 313.

SHANGHAI-YANGSHAN DEEPWATER PORT, Container Terminal), http://www.portshanghai.com.cn/en/subcompany/sd.html.

B. SLACK, *Corporate Realignment and the Global imperatives of Container Shipping*, in D. Prinder, R. Slack (edited by), *Shipping and Ports in the Twenty-first Century*, Abingdon-on-Thames, 2004, pp. 25 - 49.

X. TIAN. L. LIU, S. WANG, *Evolving Competition between Hong Kong and Shenzhen Ports*, in *Maritime Policy & Management*, 2015, 8, pp. 729 - 745.

UNCTAD, *Review of Maritime Transport (2017)*, Geneva, 2017, p. 61.

J.J.X. WANG, B. SLACK, *The Evolution of a Regional Port System: the Pearl River Delta*, in the *Journal of Transport Geography*, 2000, 8, pp. 263 - 275.

XINHUA (official media of the Chinese government), *Shandong: Integrating the port to take a new step in the construction of a strong marine province*, published on 3 May 2018.

Legislation

PRC NATIONAL CONGRESS, *Port Act* of 2004 and 2015.

PRC MINISTRY OF COMMUNICATIONS, *Domestic Waterway Containerised Cargo Transportation Rules* (repealed).

Official national and UN Databases

CHINESE GOVERNMENT, Official website of the Chinese Government, *Legislation database*, http://www.gov.cn.

UNCTAD STAT DATABASE, http://unctadstat.unctad.org.

UNCTAD STAT statistics database on individual countries http://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/156/index.html.