The ASEAN Single Shipping Market: Towards a Regional Cabotage Regime

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ASEAN's goal of establishing a single shipping market is consistent with its desire to create a highly integrated, connected and competitive region in which cross-border, intra-ASEAN establishment and provision of shipping services is permitted. However, the measures currently being mapped out for achieving the single shipping market have not included liberalizing cabotage. This article argues that abolishing cabotage by removing the prohibition on the ASEAN ship-owners to engage in each other's domestic shipping is a necessary requirement to fully achieve a single shipping market. It discusses the cabotage regimes in the four ASEAN States, namely Malaysia, Indonesia, the Philippines and Thailand. It highlights the vessel registration, licensing and manning requirements of each State. Further, the article discusses the regulatory provisions that exclude foreign ship-owners from domestic shipping and the scope of the exemptions from cabotage. Finally, it makes recommendations on how the disparate regulatory provisions can be harmonized through the adoption of an ASEAN agreement on cabotage.

Keywords

ASSM, AEC, Maritime Cabotage, EU Regulation, Malaysia, Indonesia, The Philippines, Thailand

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DOI: http://dx.doi.org/10.14330/jeail.2017.10.1.05

I. Introduction

The ASEAN Single Shipping Market ("ASSM") is an initiative of the ASEAN Economic Community ("AEC").[1] The ASSM aims at improving the capacity, connectivity and competitiveness of the maritime sector in the region.[2] The target of the AEC is to create an ASEAN single market and production base to facilitate the free flow of goods, services, capital and skilled labor.[3] The AEC Blueprint 2015 envisaged that the targets should have been implemented by 2015.[4] However, as this did not happen, some of the measures are now prioritized under the current AEC Blueprint 2025.[5] The ASSM entails liberalizing internal frontiers within the ASEAN States to create an area in which shipping service providers have unrestricted access to establish and operate across national borders, subject to domestic regulations.[6]

The primary purpose of this research is to demonstrate that the liberalization of the maritime cabotage trade of the ASEAN Member States is an essential prerequisite towards achieving a Single Shipping Market in the ASEAN. The EU experience of creating a single market shows that this can only be achieved through deep regional economic integration.[7] A single market in the ASEAN maritime transport will necessarily involve enacting a regulation to remove cabotage restrictions and to harmonize Member States' shipping policies.[8]

1 The AEC is one of the three pillars of the ASEAN, together with the ASEAN Political-Security Community ("APSC") and the ASEAN Socio-Cultural Community ("ASCC"). *See* ASEAN Charter pmbl. & Annex, *available at* http://www.asean.org/wp-content/uploads/2012/05/11.-October-2015-The-ASEAN-Charter-18th-Reprint-Amended-updated-on-05_-April-2016-IJP.pdf (last visited on Mar. 25, 2017).

2 ASEAN Economic Community Blueprint 2015 (2008) (AEC Blueprint 2015), ¶ 50, *available at* http://asean.org/wp-content/uploads/archive/5187-10.pdf (last visited on Apr. 20, 2017).

3 ASEAN Charter art. 1(5).

4 AEC Blueprint 2015, ¶ 5.

5 ASEAN Economic Community Blueprint 2025 (2015) (AEC Blueprint 2025), ¶ 48(iii), *available at* http://www.asean.org/wp-content/uploads/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf (last visited on Apr. 20, 2017). It states: "Establish an ASEAN Single Shipping Market ("ASSM") and promote maritime safety, security and strategic economic corridors within ASEAN, through the following key measures: (a) continue to strengthen maritime connectivity within ASEAN through the establishment of ASSM regional transport cooperation and effective implementation of the International Maritime Organization ("IMO") conventions towards realizing an integrated, efficient, and competitive maritime transport, including fostering a culture of maritime safety within ASEAN."

6 Maritime Institute of Malaysia, Towards a Single Shipping Market in South East Asia (July 25, 2011), *available at* http://www.mima.gov.my/v2/?m=posts&c=shw_details&id=193 (last visited on Mar. 25, 2017).

7 P. Lloyd, *What is a Single Market? Application to the Case of ASEAN*, *in* Brick by Brick: The Building of an ASEAN Economic Community 15 (D. Hew ed., 2007).

8 The features of the EU internal market (as stated in Article 8A of the Single European Act of 1987 O.J.L 169/1) are in similar terms with Article 1(5) of the ASEAN Charter. The latter provides for the establishment of the ASEAN as a single market and production base.