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**SYSTEM OF SHIPPING THEORY (3)**  
**—THE METHODS OF SHIPPING POLICY—**

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*Professor of Transportation*

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While the shipping policy in its traditional sense dates from the modern times, it should be pointed out that it has witnessed a remarkable progress after the modern ages. Although it is generally considered that as various countries of the world are naturally equipped with their own respective shipping policies in various concrete forms, such had naturally to follow their respective courses of development, it was nonetheless a fact that, consequent upon the phenomenal transition from the form of "private carrier" to the form of "common carrier," a world shipping market as an entity had come into existence, as a result of which the shipping policy of each country had inevitably undergone a certain extent of metamorphosis. In other words, in the days of private carrier, when goods needed by one country had to be transported aboard its own shipping, the shipping policy of that particular country had naturally to lay emphasis on the protection and subsidization of its own shipping, and thus its main concern centered on the domestic aspect of the country. As, however, the form of common carrier gradually replaced that of private carrier and then unrestricted utilization of shipping of other countries was made feasible, the shipping policy had unavoidably to think of its own shipping in its relation to

foreign shipping and give the necessary protection and subsidization to its own shipping. While protection and subsidization of own shipping still remained to occupy the pivotal point of policy, its relation to world shipping at large had come into consideration more than its domestic angle.

In strictly economic terms, it would seem unnecessary and superfluous to think of the development and subsidization of own shipping when foreign shippings of cheaper service are amply available. In such a case, it would even be said that a shipping policy is totally unnecessary. A shipping policy, it should be noted, will not always be determined by economic reasons. Non-economic reasons would often determine it. Even in the modern ages, it was not entirely out of question to utilize foreign shipping; much more so in the present times, when there is an unbounded scope of utilizing foreign shipping, which often offers cheaper and much better services. In spite of this, the fact stands that most countries still persist in adopting a more or less positive shipping policy of their own. This circumstance will not easily be explained away unless we presume that there are certain non-economic reasons working behind all this. Notwithstanding this, the gradual generalization of the form of common carrier could not but exert a certain fundamental modification in the modern shipping policy of various countries.

With reference to the domestic and foreign tendencies in the shipping policy in general, classification of the shipping policy as a "method" (direct method and indirect method) could be considered as well.

Now, according to Heckhoff,<sup>1)</sup> protection and subsidization of shipping by means of judicial measures (Schiffahrtsschutz) is classified as the direct method, while subsidization through granting of subsidiary money (Schiffahrtssubvention) the indirect method. This is quite contrary to the usual method of classification adopted in the theories on shipping policy. In the usual classification, monetary and economic subsidization to domestic shipping interests, including those connected with shipbuilding, is considered to be the shipping protection and assistance policy, and, therefore, the indirect method, defined by Heckhoff, is usually referred to as the direct method, while, on the contrary, such policy as prompted merely by judicial measures is termed the indirect method. However, when the shipping policy is interpreted in its traditional sense with a predominance of its foreign tendency, monetary subsidization to domestic shipping interests would rather be interpreted as the indirect method, and the judicial steps based upon the exclusion of and discrimination against foreign vessels the direct method. Heckhoff did not explicitly expound the reasons and theoretical grounds for his method of classification. The classification of the present writer (Sawa)

1) Heckhoff, H.: Die Schiffahrt in der Aussenwirtschaftspolitik, Köln 1938. SS. 25 ff.

is, according to the above mentioned reasons, as follows.

Methods of Ship- ping Policy	{	Direct method.....	Granting of special privileges by means of judicial measures
		Indirect method.....	Subsidization by means of gran- ting of subsidiary money

### I. Definition of the Conception of National Vessels

First thing to be definitely determined in connection with the adoption of a policy for the protection of national shipping would be how to classify the national ships from foreign vessels. National shipping constitutes the very object of such policy. It is, therefore, a great important thing to determine a proper definition of the conception of national ships. The ship registry system was brought into being in an effort to answer this question.

Let us first review this particular question from a historical point of view. At first every country tended to classify any vessel owned by its own nationals as a national ship. Among various means of transportation, however, shipping, unlike, for example, railways, is never confined to certain domestic areas alone but has a more or less extended international areas of activity, and chartering and purchases of ships naturally take place frequently on an international scale. Thus, it is clear that the definition of national vessels merely on the ground of the respective nationality of their owners would be deemed inadequate in achieving the ultimate aim in view of a shipping policy. Suppose a certain country, for the purpose of maintaining and strengthening its own shipping, decides to confer some preferential rights only to such vessels as are owned by its nationals, it would easily be presumed that some foreign vessels, in order to share in those special treatments, would take steps to nominally shift their nationality to that of this particular country in question. Furthermore, in order to see national shipping maintained and strengthened continuously in the true sense of the term, it would be necessary that not only a certain number of ships is owned but also, at the same time, certain levels of shipbuilding industry as well as an adequate number of able sailors are available. Thus, it is obvious that, in order to meet these purposes, it is of essential necessity that, besides mere "ownership", "construction" on home land, "operation" by own nationals will have to be counted among the indispensable conditions in any definition of national ships.

The first law which was enacted in history for the purpose of defining that national ships should not only be owned by the nationals but also be operated by nationals, was probably the Shipping Act (1st Henry VII. ch.

8.) promulgated by Henry VII in 1485, the first year of his accession to the throne. This Act stipulated that Wine of Guienne and Gascony should be imported only in English ships, of which the greater part of the crew must be English. Considering the fact that Henry VII was the first king in the line of the Tudors, and that it was the Tudor dynasty that laid the groundwork for the modern English shipping policy, the implications of this particular Act cannot afford to be overlooked. The Act (4th Henry VII. ch. 10.) which was enacted three years later concerning the import of Toulouse Woad, further, stipulated that the captain should also be an Englishman. This stipulation was kept intact in the law of the Naval Encouragement of 1540 (32nd Henry VIII. ch. 14.), in the law (5th Elizabeth ch. 5.) enacted by Queen Elizabeth in 1562, the famous Cromwell Navigation Act of 1651 and so on.

However, with the passing of the years into the Modern Ages, it was discovered that stipulation regarding the ownership and operation alone was quite inadequate for defining national ships, and, thus, the First Navigation Act (12th Charles II. ch. 18.) promulgated by King Charles II in 1660 went so far as to stipulate that in order to be recognised as an English vessel, it should not only be owned and operated by English nationals but also that such ship should be constructed in England. This Act, further, stipulated, with regard to operation, that the captain and one-fourth of the sailors at least should be of English nationality.

It should be noted, in this connection, that it was prior to the generalization of the form of common carrier that England was under such a strict form of ship registry system. Following the abolition of the Navigation Acts successively in 1849 and 1854, which allowed England to rapidly develop into a shipping country of the third type as classified by the present writer, the principle of ownership alone has up till today been left intact; the other principles of operation and construction have been given up. The same applies also with the shipping laws in force in Norway, Germany<sup>1)</sup> and Japan<sup>2)</sup>. France<sup>3)</sup> adopts both the principles of ownership and operation, while the United States of America sticks to the concurrent adoption of the three principles of ownership, operation and construction<sup>4)</sup>. The policy in which foreign-built ships are freely allowed to assume a certain nationality is understood under the name of the free ship policy, and among the na-

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1) The Ship Registry Act of June 22. 1899.

2) The Ship Law of March. 8. 1899.

3) It is the rule of the traditional shipping policy of France to subsidize almost all the vessels owned by her own nationals, without regarding to the domestic or foreign construction.

4) The Merchant Marine Act of 1936. § 101.; The construction principle was already adopted in the first Ship Registry Act (1789) of U. S. A.

tions which adopt this policy since the 1st World War are mentioned England, Germany, Scandinavian countries, Holland, Belgium, Spain, Portugal, Greece and Japan<sup>1)</sup>.

These various forms of the ship registry system adopted are sufficient to indicate the respective characteristics of these shipping nations. While it is assumed that such countries as have the overseas carrying routes as their principal spheres of activity, by sheer need of clarifying their relations to foreign ships, might endeavour to strictly determine and define the conceptions of national vessels, the fact that prevails is rather contrary to such assumption; in those countries where shippings have attained a certain high standard of development, an overduly strict application of the provisions for nationality of the ships might lead to the result of reducing the shipping bottoms normally required for the operation of their own shipping activity. It would thus be considered a matter of indispensable necessity that a way be left open for the importation or chartering of foreign vessels. This means that abolition of both the construction principle which hampers the importation of foreign ships and the operation principle which is liable to stand in the way of chartering of foreign ships, becomes a matter of urgent necessity. On the contrary, those countries where coastal shipping constitutes the main spheres of activity, in the face of the desire that these domestic shipping routes, at least, be left immune from the penetration of foreign ships, will have to impose a more strict conditions on the definition of national vessels.

From a purely economic point of view, such strict ship registry system, together with the other shipping protection policies, would be harmful even in the shipping countries of the first type, as well. It stands to record that in the United States of America, following the termination of the Civil War, two parties, one standing for the shipping protection policy and the other for free ship policy, engaged in a bitter controversy over the issue of whether such ship registry system should be continued or not. This particular system has been retained up till today, and the result has been that one particular group of shipping and shipbuilding interests have been benefitting from it.

As has been mentioned partly in the preceding lines, the installation of the ship registry system and the definition of ship nationality are mainly for the purposes of the monopolization of coastal trades, the exemption or reduction of customs duties and the acquisition of various subsidies, which would be granted to national ships as special privileges. Such methods of policy are usually adopted especially when the carrying form of the first

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1) Jones, G. M.; Government Aid to Merchant Shipping, Washington 1925. pp. 10-11.

type is in force. Therefore, it should be said that, at present when a certain degree of development of the form of common carrier by foreign ships has already been attained, imposition of strict conditions on ship registry acts is obsolete and out of date. This, of course, can be said, from a purely economic point of view alone. A different aspect will loom into view, when national defence and other noneconomic factors are taken into consideration.

## II. Granting of Special Rights by Judicial Means (Protection of Shipping)

A resort to judicial means would be inevitable, if an attempt is made to protect directly national shipping against foreign ones. Among the various legislative measures liable to be adopted for this purpose, the most extreme and severe would be the monopolization of shipping routes, while the more lenient would be discriminatory measures. The monopolization of a shipping route applies when a certain country reserves the services exclusively for its own national shipping on the trades routes under its political control, while discrimination would take place when a certain country, while allowing services by foreign ships, would treat them with certain disadvantages in comparison with its own national ships on the trade routes under its political control. To show these relations in a classified table<sup>1)</sup>:

Special Rights by Judicial Means (Direct Method)	{	(1) Monopoly of trade routes	{	a) Monopoly of general routes
				b) Monopoly of colonial routes
				c) Monopoly of coastal trade routes
		(2) Discrimination	{	a) Discrimination in ships
				b) Discrimination in cargoes
				c) Other discriminations

### (1) Monopoly of Shipping Routes

#### a) General Monopoly of Shipping Routes

Among various forms of monopoly of shipping routes is mentioned one which is described as the general monopoly of shipping routes, which, without specifying any special routes to be affected, would reserve all spheres of marine transportation for national ships to the total exclusion of foreign vessels. However, it should be noted that such general monopoly of shipping routes is rather too vague in its contents and should be considered to be attended with little possibility of actual realization, and, therefore, as a matter of fact, it follows that in some form or another there occurs a

<sup>1)</sup> Heckhoff, H.: Die Schifffahrt in der Aussenwirtschaftspolitik, Köln 1938.

specification of particular routes together with cargoes carried. However, it must be pointed out that even this form of monopoly differs from the other forms of monopoly (the monopoly of colonial routes and of coastal routes), that its effect is more or less general compared with the other forms and that the lines affected are not necessarily under the political influence of the particular countries taking such measures. As instances of this form should be mentioned the case of Hansa, that the cities bound by the Hanseatic League were stipulated a compulsory loading of cargoes in the Hanseatic ships, the English law of 1381, (5th Richard II. statute 1, ch. 3.) which stipulated that no English subject should be allowed to export from, or import into England, any merchandise save in English ships and another law of 1390 (14th Richard II. ch. 6.) which ordered all English merchants should freight in the ships of the Realm, and not strange ships.

In England in the early part of the modern ages, in her impatience to expel the influences of foreigners, such forms of exclusionist policy were often resorted to. In the enforcement of such measures, however, it was inevitable that a considerably large fleet of vessels was required, and then, it was not seldom that these laws became dead letters and had later to be revised. The law of 1382 (2nd Richard II. ch. 2.) offers the most striking instance of such cases. The law (1st Elizabeth ch. 13.), issued in the first year of Elizabeth's throne, was one of the most glaring instances of the laws thus revised in later years. Thus, England gradually awakened to the necessity of dispensing with such form of general exclusion, and, instead, of resorting to a policy of partial exclusion, in which particular routes as well as specified cargoes would be reserved for national ships in a more moderate form. As an instance of such partial restriction, there might be cited the series of laws,<sup>1)</sup> which stipulated that the importation into England of the Gascogne wine should be loaded either by English or Gascogne ships.

In the shipping acts promulgated by Cromwell and Charles II the policy of general exclusion of foreign ships did probably attain the biggest magnitude. Essentially these acts were for the purpose of the monopolization of colonial routes. They, moreover, confined both the European routes (Importation) and English routes to the activities of English ships. Import into England by foreign ships of Asian and American goods as well as important European products was prohibited, and under the reign of Charles II, it was further stipulated that non-European goods were not to be imported to England from European ports aboard foreign vessels. Seeing, further, that English coastal trade routes were likewise closed to foreign

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1) 42nd Edward III. ch. 8, 1368; 1st Henry VII. ch. 8, 1485; 4th Henry VII. ch. 10, 1488-89; 32nd Henry VIII. ch. 14. 1540.



ships, it would have meant, in those days, that virtually entire world sea areas had been monopolized by English ships, to the utter exclusion of foreign vessels. For England then lacking an adequate supply of industrial and naval materials, the adoption of such a comprehensively prohibitive measure was probably unavoidable as part of her eager effort to build up her great fleet and expand her foreign trades. However, it should be recalled that these navigation acts were revised several times thereafter. It amply shows that literal enforcement of these acts was actually out of question. Such, generally, indicates what the general monopolization of shipping routes is and how it operates.

Similar measures of general exclusion were likewise taken by other countries. For instance, Sweden in 1724, France in 1793, and the United States of America in 1817 adopted similar steps. In 1825, however, Sweden slightly slackened the restriction and permitted an indirect trade with Norway. The example was quickly followed by other countries. In the case of the United States, the circumstance was a little different, for there such a measure was taken in retaliation against such country as had resorted to a policy of excluding United States ships generally, and the other countries which had not excluded United States vessels were exempted from the application of the restrictive measure. France, on her part, could not afford to enforce such measure strictly to the letter under the impasse of the Revolution and the subsequent Napoleonic wars. These countries, it is evident, apparently lacked the shipping bottoms in sufficient volume as would enable the literal enforcement of such exclusionist policy on the one hand, while, on the other, their respective national economies did not necessarily make such policy imperative.

With the development of her capitalism toward the middle part of the nineteenth century, England became to be convinced of the fact that such policy of monopolization of trade routes was rather tantamount to a suicidal measure, and, following the successive major revisions effected in 1822 and 1825, eventually took steps to repeal the navigation acts in the years 1849-54. It should be noted that such was a natural transition attendant upon the metamorphosis of England from the second-type maritime country to the third-type.

#### b) Monopolization of Colonial Shipping Routes.

This applies to the case in which the navigation on the shipping routes connecting the homeland to her colonial territories is dominated by national ships. (The monopolization of the shipping routes from one port to another of a colonial territory would be considered in terms of the monopolization of the coastal shipping lines).

The navigation acts of Cromwell and Charles II originally were intended for the monopolization of the two shipping routes, that is, the general shipping routes and the colonial routes. To specify these in concrete terms :

- (1) The routes of import to England of Asian, African and American goods ;
- (2) Routes of import to England of European goods ;
- (3) Routes of import to England of non-European goods from European ports ;

The operation over these various routes was reserved to English vessels. It is noted that, referring to the above, item (1) is the case of the monopoly of the colonial routes, whereas items (2) and (3) refer to either general or specific monopoly of shipping routes. Among these, the most important was, of course, the case of item (1), while item (3) should rather be called a provision of guarantee for the purpose of safeguarding the monopoly as was provided for under item (1). The reasons why England had resorted to such legislative measures was, as has been repeatedly described, due to the fact that the Dutch merchant fleet, then dominating the entire world trade shipping, had the sea routes connecting English colonial territories virtually under her rule and thus was in a position to hamper development of the English colonial policy, which was, in other words, that the Dutch were obstructing the development of English national economic or capitalistic foundation. In later years, England succeeded to get overhand over the Dutch, and, with the attainment of her immediate objective in view, England had to repeal of the old policy of monopolizing her colonial routes. The first measure to come along this line was the permission enacted in 1825 of the importing aboard foreign ships of colonial goods loaded at ports of origin, which was closely followed by another, when in 1849 the colonial routes were entirely opened to foreign bottoms.

England was not the originator of the policy of the monopolization of the colonial shipping routes. As soon as she acquired overseas colonies, Spain strictly stipulated that Cadiz should be the port of leaving and arrival in traffic with her colonies in Africa, and Sevilla in traffic with her colonies in America. This provision was strictly observed. This was probably the most primitive form of the policy of the monopolization of the colonial shipping routes. In the case of Spain, such form of monopolization automatically died out with the speedy loss of her overseas colonies.

Even today France finds a certain degree of importance in the policy of the monopolization of the colonial routes. The origin of her policy dates back to the navigation act which J. B. Colbert promulgated in 1670 after

the pattern of the English.

At present this particular policy, together with that of granting subsidies, constitutes the main two measures supporting France's shipping policy. After the first World War, the then French Government boldly set upon the policy of the imperial preference or monopoly in regard to her colonial routes, and in the law of June 30, 1934, explicitly stipulated that "marine transportation homeward from colonial ports of colonial goods, excepting special cases, should be made by French merchant marine." In the law of June 28, 1935, no exceptional treatment was recognised in the transportation homeward of bananas, which was placed under a perfect French monopoly. A further advance in the same direction was, October 30, 1935, witnessed in the legislation, which made it obligatory to transport them by French ships.<sup>1)</sup>

One factor which led France to take such series of monopoly will be found in the internal nature of national economy in France, or, in other words, in the fact that her colonial policy generally lacks positiveness. In order to develop her national economy, France had to feed her existing merchant fleet on her monopolized trade routes, which were imperative for the maintenance of that fleet. The policy for the monopolization of her colonial and coastal routes was to meet this fundamental objective. Eventually distinction between these two categories was lost sight of. France, thus, went so far as to declare that the whole length of the shipping routes from Saigon to Marseilles was nothing but her own coastal route, and tried to reserve these whole routes for her national shipping. This tendency, however, it should be noted, is not confined to French policy alone; all the maritime countries of the first type more or less show such a tendency, and the United States of America would be cited as the most striking instance of this category.

#### c) Monopolization of Coastal Shipping Routes

Cromwell's navigation act would be called a challenge hurled by the English shipping (Type II) against the Dutch merchant fleet, which was then in a dominant position in the world sea trades. It would thus be seen that England at that time was under the urgent necessity to drive out the Dutch shipping not only from colonial trade lines but also from general European routes. In this particular case, further, it was imperative that the Dutch be expelled from the lines from one port to another in England, which bore the same meaning to the Dutch as the routes between foreign navigation ports. It was a matter of course that Cromwell's navigation

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1) Akar, M.: *L'Evolution des Transports Maritimes en France depuis la Guerre*, Paris 1937, pp. 171 ff.

act kept this fully in view.

In mediaeval England, there was a distinction of ships between larger ones and smaller ones. The latter were usually called "hoys" or "plates", which were strictly designated for domestic sailing and were not permitted to overseas trades. Evidently the aim of such stipulation was to avoid unnecessary friction between these smaller coastal and larger ocean ships. This was, in other words, to mean that foreign trade was exclusively to be carried by larger ships, and this, in turn, worked to promote the construction of larger-type vessels. Passing on to the Elizabethan dynasty, however, more drastic measures were taken: in 1562 a new act (5th Elizabeth, ch. 5.) was enforced aiming at reserving coastal trades to national ships to the exclusion of all foreign vessels. The contention advanced in this connection was that no goods should be carried from one port or creek of the Realm to another port or creek of the same Realm in any vessel whereof any stranger or strangers born are owners, shipmasters, or part owners. This should be considered to mark the very beginning of the policy for coastal trade monopoly.

In the same way as it had been necessary, with regard to overseas trade, for England on the threshold of the modern ages, to expell Hanseatic merchants from her steelyards, so it was necessary, as she was about to be transformed into the second-type shipping country from the first type, to resort to such drastic measures.

This policy for the monopolization of coastal lines, as has already been described in the preceding lines, was followed in the navigation acts of Cromwell and Charles II, and then, for the subsequent 200 years, this same line of policy has been faithfully followed by England. (While the monopoly of colonial routes has repeatedly been revised since its beginning, the monopoly of coastal routes has been subjected to no revision during the period of these 200 years.) The example set by England was followed, successively, by Sweden (1726), France (1793), the United States of America (1817) and Prussia (1822), and thus the policy for the monopolization of coastal routes came to assume the appearance of being an inseparable and immutable section of the modern shipping policy.

In 1854, five years after the repeal of the Navigation Acts, England took steps to repeal the policy of the monopolization of coastal routes for the same reasons which had prompted the earlier repeal of the Acts. This, however, was the result of a series of bitter controversies. (The repeal of Navigation Acts and the abolition of cabotage monopoly mean for England the development from the second type of shipping country to the third type.)

American shipping was then a keen rival of English shipping in their competition for wo-

world hegemony. The English, therefore, had to consider carefully what effect would be brought to bear upon American shipping in case her long-monopolized coastal routes were opened. W. E. Gladstone was against the repeal of the coastal routes monopoly. He contended that the entire route to San Francisco from Boston via Cape Horn, which the Americans would call just a coastal line, was by no means shorter to the line connecting the English homeland with Australia. Such highly oceanic routes would very well be comparable to the routes between English colonies widely stretched out. On the contrary, what is understood by the English as a coastal routes would be, for example, such as links Boston to New York, which is very much shorter in length. In view of this, he contended, the opening of the English coastal trades should be preceded by the understanding on the part of the Americans that the English pattern would be followed, or otherwise, these lines should never be opened.

Retorting against this, Sir Robert Peel asserted that any modification of the English stand in accordance with various different countries, such as America and the Netherlands, would only result in extending to no purpose the "existing situation which is described as highly complicated and half paralyzed," and argued for the outright repeal of the monopolization. The Manchester school including John Bright and Richard Cobden concurred with this, asserting that there would no longer be any need for English shipping to have domestic routes monopolized for their sake, as it was actually engaged in a full-fledged activity over the overseas trade without political protection.

While it stands to record that the free traders eventually scored a victory, the fact is interesting that five more years needed before the stipulation regarding the monopolization of coastal routes was perfectly repealed after the salient provisions of the same legislature had already been virtually modified to null, as this would be interpreted as indicating the English conservatism which will come out to the fore when a drastic renovation is contemplated.

As this was simply a measure taken with regard to English domestic coastwise routes, it naturally failed to affect the other countries so much as did the repeal of the salient points of the Navigation Acts. It was found, on the contrary, that most countries even then continued to reserve their cabotages to their own national ships, and England, on her part, never did mind this very much. England was then on the road of rapid capitalistic advancement and naturally her chief concern was centered on international overseas routes. Thus, according to Heckhoff, the coastal trades became the object of the least concern toward the latter years of the nineteenth century.<sup>1)</sup>

Preceding England, Holland opened her coastal trades to foreign shipping. Norway, under the law of July 17, 1869, followed the suit of England and opened her cabotage routes to foreigners. France, for once, followed the English example and opened her colonial shipping routes, which she later closed for a second time, but, as regards her coastal routes, she has ever kept them under her monopoly since September 21, 1793. In the case of the United States of America, it should be recalled that that country, in keen competition with English shipping, had at first taken steps to reserve its own domestic routes to her national ships. Her cabotage monopoly ought

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1) Heckhoff; S, 41,

to have opened following the change of policies on the part of England. This system, however, continued to remain in force even after that, and the reason for it was that America, since the end of the Civil Wars, was in a position to take drastic measures in order to forestall the decline of her shipping. Germany<sup>1)</sup> and Japan,<sup>2)</sup> on their parts, were then in the face of the rising shipping and had to protect their respective national ships, and, thus, this system was ever strictly adhered to.

Below follows a classification of various coastal trade systems followed by various countries:<sup>3)</sup>

- (i) Coastal lines closed to foreign shipping :  
France, Greece, Japan, Canada, Portugal, Soviet Union, Spain, the United States of America and others.
- (ii) Coastal lines opened to foreign shipping as a rule :  
Denmark, Germany, Italy, Sweden and others.
- (iii) Coastal lines opened to foreign shipping unconditionally and without limitation :  
Belgium, England, Holland, Norway and others.

This classification amply shows that those shipping countries belonging to the first and second type invariably have their coastal routes closed to foreign shipping, while those of the third type have them opened.

It is evident that the countries of the first type resort to this system in order, at least, to reserve their coastal routes to their own national fleet, while those of the second type are not in a position to open these routes unconditionally and without limitation to foreign shipping, because these routes, together with their overseas routes, constitute specific spheres of activity for their national vessels. On the contrary, the third-type countries alone can safely open their coastal routes to foreign ships without any fear of such adversely affecting their own shipping. Their opening would rather be beneficial to themselves, because the spheres of activity for their own vessels would be widened further in the event of other countries following these suits and opening their coastal lines. This will be seen clearly in the maritime liberalism strongly advocated by England ever since the middle part of last century, especially after the end of the World War I.

The English contention in this regard was :

While there appears to be a view, regarding our coastal shipping, that this should be reserved for our national ships, it would seem hard to concur with the fact, because not only the main activity of English shipping centers round overseas trade but also because foreign shipping entering and clearing English coastal ports constitutes merely less than 1% of the entire vessels

1) Law of May 22. 1881.

2) Ship Law of March 8. 1899.

3) Heckhoff: SS. 36-8.

operating along the English coasts. As regards the Indian coastal trades, further, it seems reasonable at first sight that this should be placed under exclusive English monopoly in consideration of the competition with Japanese shipping. But, this again is objectionable, because such would certainly be liable to incite Japan into competition in the other routes. The proposal for monopolizing, for the sake of English shipping, the shipping routes between English oversea territories and colonies would, again, appear without adequate foundation, because of the fact that no less than 90% of transportation of goods there is dependent upon English tonnages.

This is the gist of opinion advanced in the report entitled "Shipping and Shipbuilding Industries After the War" published by the Shipping and Shipbuilding Commission of the Board of Trade in 1918 in an effort to establish the shipping policy to be taken by England following the termination of the World War I. This view has ever since been firmly upheld by England as the guiding principle of her shipping policy, which, it should be noted, is a matter of course seeing that England is a third-type country as far as her shipping is concerned.

The preceding lines have probably made it clear that the coastal shipping policies adopted by various countries differ widely. This particular problem was taken up on the agenda at the World Port and Harbor Convention convened in 1923, when no final conclusion was reached, probably because the definition of coastal trades varied uncompromisingly among the participating countries. It would be said, however, that the new mercantilism, gaining power after the World War I, has generally tended to unduly widen the scope of the conception of coastal shipping.

It would need to cite examples of many countries; let us here review the case of the United States, only.

When in March, 1817, the United States took steps, by dint of Article 4 of her Navigation Act, to reserve her coastal routes for only her own national ships, she had not a speck of territory of her own along the Pacific. The subsequent aggrandisement of her territorial lands, however, gradually made the United States extend the scope of the application of this Article: the first to be included in her coastal routes was the route leading to Pacific ports from her Atlantic ports via Panama Canal. When Alaska also was included in her own territorial lands, American government authorities defended their action with the contention these "territories belonging to the North American continent and being run under common ordinary political systems should have this stipulation applied likewise." However, the Congress of 1898-99 following the end of the American-Spanish War, discarded this view without much ado, and effected a surprisingly wider extension of the conception of coastal shipping to have both Hawaii and Puerto Rico embraced in the general framework.

The provision for coastal shipping routes dated February 27, 1898, stipulated that "cargo

transportation from one American port to another, whether it is direct or via a foreign port, or whether it constitutes part of a navigation or otherwise, should always be done by United States ships." In 1914, the San Francisco port authorities filed a suit against a German vessel, which had reached San Francisco after circling round the globe with New York as the starting point, on charge of violation of this particular stipulation. This extremity of absurdity did actually happen.<sup>1)</sup>

Ironically enough, such an unduly wide extension of the application of coastal shipping drove the American territorial islands into a highly disadvantageous position due to the fact that the United States then was not in possession of sufficient shipping bottoms to cover the entire shipping routes extending to these islands. Take the example of Puerto Rico. After the area was included in the American coastal routes system, the local export and import freight rates witnessed a rise; for instance, the freight rates for sugar from Puerto Rico to New York became higher than those from Cuba to New York. Not only this, but participation of many foreign vessels in the coastal trades of Puerto Rico would have resulted in an increase of foreign trades for that territory, if its trade had not been reserved exclusively to American shipping.<sup>2)</sup>

In spite of this fact, those shipping interests in America, in favor of subsidizing their shipping at that time, even advocated further extension of the application scope of the coastal shipping provisions. They voiced their opinion that this particular provision should be applied to the navigation between the American homeland and the Philippines. The treaty with Spain, however, offered various difficulties in the way of this being materialized. Another obstacles to this was the fact that the United States then did not possess enough bottoms to monopolize this extended routes. It was obvious that, if such were forcibly put into force, the consequence to be expected would have been precisely the same with that of Puerto Rico. The Congress of 1902 did show much hesitation and, indeed, eventually decided on the postponement of the enforcement of this coastal shipping provision until July 1, 1904, as far as the Philippine islands were concerned. During the intervening period, there was a bitter controversy between two opposing factions, one standing for the forcible enforcement of the provision in question and the other attempting to have this particular routes exempted from its application and, eventually, in 1908, it was decided, from fear that the application of this provision to the Philippines would certainly result in a terrible rise of commodity prices there, that these islands were to be excluded from the application of the United States cabotage monopoly.

This, however, failed to put an end to the movement for the extension

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1) Heckhoff: S. 40.

2) Zeis, P. M.: American Shipping Policy, New York 1938. p. 56.



of the application scope of the American coastal shipping system. Reference should be made to the Merchant Marine Act, 1920, in this regard. This law, which is indicative of the preponderance of the American mercantilistic tendency prevailing at that time, decidedly laid down the principle that the coastal shipping provision could be applied to all American territorial lands and islands, with the additional stipulation, however, that the application of the provision to such far-off areas as the Philippines would have to wait until a specific notification was issued by the President of the United States to the effect that the United States was in possession of sufficient shipping bottoms to carry the overseas trades with these islands. It shows that the Philippine islands, which in 1908 were once exempted from its application, are now again included in the cabotage system. And then, the United States thought herself that she was equipped with a sufficient bottoms to efficiently monopolize the Philippine line, even though it was unrefutable that the available fleet were for the most part of wartime built and inferior quality. It may be added here that by dint of this law, Guam and Tutuila were also included under the American coastal shipping control.

The New Deal, which was enforced in the midst of the world economic crisis, affected various fields of American national economy, and the shipping industry was no exception. The effect of the New Deal on shipping was, however, not necessarily a welcome one, because, under the impasse brought by the drastic changes attendant upon it, the principle of free competition and non-monopolization, which had been won by the Shipping Act of 1916, had to be thrown overboard. While the Shipping Act of 1916, (Article 18) on the principle of free competition, had granted on the government authorities the right to determine the upper ceiling of freight rates, the attempts of the New Deal were now made, from the standpoint of restricting competition or approving monopoly, to grant to the government officials the authority to determine the lowest limits of freight rates. This was indicative of the general tendency, in the face of shipping depression consequent upon the world crisis, for the protection of shipping liners prompted by the desire to overcome this depression on the strength of liner companies, or, in other words, the shipping conferences.

The same trend of policy was also seen in the cabotage system. In essence, the issue was that the general tendency was not for the monopolization of coastal lines, but, rather, for the strengthening of such policy. To explain this :

No foreign vessel shall transport passengers between port or places in the United States or its possessions, now or hereafter embraced within the coastwise laws, either directly or by way of a foreign port, or for any part of such transportation, nor on a continuous voyage termina-

ting at the port of departure or at any other port in the United States or its aforesaid possessions, notwithstanding said vessel enters or touches any foreign port on such voyage.

The above quotation, constituting a part of the bill presented then by the Shipping Board, shows an attempt at the extension of the application of coastal shipping provisions to the extent that mere common sense would find it hard to comprehend. Fortunately, however, the proposal was criticized by the then Secretary of State Stimson as being an "an artificial extension of the definition of coastwise trade beyond all precedent and beyond any previous application of the term"<sup>1)</sup> and was not approved by Congress.

While the American shipping policy has generally been accused of having no definite principle to guide it, the protective policy with regard to her coastal navigation is its sole aspect which has steadfastly been adhered to. The influences swayed by the shipping lobbyists are well known; they, in a sense, had their interests centered on the intended monopolization of American coastal lines. It cannot be denied that the American shipping policy has greatly been influenced by their maneuvers, explicit or implicit, and this fact should be taken as one of the characteristic features underlying the American shipping policy. America is so intended on securing the coastal trades monopolized by her own merchant marine. For her shipping has never been so powerful as to dominate overseas shipping and routes. She, therefore, always been prompted by the desire to keep her coastwise trades, at least, intact from a penetration by foreign fleet. In a word, it should be said that the United States, even today, remain to be a country belonging to the first type as far as her shipping is concerned.

## (2) Discriminating Treatment.

While the monopolization of shipping routes as described above should be interpreted as a manifestation of an imperial preference idea or such based on the flag discrimination, the same notion also took some other forms of expression as circumstances required. It, therefore, follows that our study should branch into multifold ramifications; here, however we will endeavour to confine our observations to as small a sphere as possible, description being limited to pertinent salient points only.

### 1) Discriminating Tonnage Duties.

The discriminating tonnage duties and discriminatory customs duties constitute, perhaps, the methods of discrimination pregnant with the most important meaning besides the monopolization of shipping routes.

Under the method of the discriminating tonnage duties, foreign ships entering a national port are clearly distinguished from national vessels, a cer-

1) Zeit: pp. 170-71.

tain fixed rate of duties being levied on their own tonnage. Though such a discrimination was first put into force at the time of Henry IV, France, nothing definite is known about when and how it was enforced and what effect it had then. Richelieu made an attempt at it, which is said to have been made into a law at the time of Mazarin, his successor, in 1659.

In later years, the United States has most assiduously and positively followed this method of discrimination against foreign ships. In 1789, immediately after her independence, the United States took steps to impose such discriminatory tonnage duties against all foreign vessels, irrespective of whether or not the foreign country in question had concluded a treaty of commerce and navigation with the United States. Although the circumstances and the implications of these tonnage duties imposed were rather complicated. It was stipulated that United States ships (those ships which had been constructed in the United States and totally owned by United States nationals or those foreign-built ships which had been continuously in possession of United States nationals since May 29, 1789) need pay only 6 cents for every ton of their tonnage, while the rates of such duties were 30 cents for those American-built ships whose ownership was partially or totally in the hands of foreigners, and as high as 50 cents for all other foreign ships, on every calling at a United States port.

The "United States ships" as alluded here, it is noted, are in accordance with the definition provided for in the Ship Registry Law passed by Congress in that year. It is reminded here that the discriminating tonnage duties were imposed quite separately from the discriminating customs duties, which were imposed on the cargoes transported and imported aboard these foreign ships. The fact that such series of positive shipping policies as the Ship Registry Law, discriminating tonnage duties and discriminating customs duties was systematically adopted by the United States in those years, would call our attention and interest as indicative of the mercantilistic policy then in prevalence in that country. The adoption of discriminating tonnage duties, however, was more as a retaliatory measures aimed against England rather than a general policy. In the nineteenth century, and especially after the shipping policy of England became more of a liberalistic tendency following the termination of the Napoleonic Wars, the United States, in keeping with the changing tides, had gradually to revise her stand with regard to this policy.

By virtue of the treaty concluded with England under the date of July 3, 1815, the United States discriminating tonnage duties were placed on a reciprocal basis. The policy of discriminatory tonnage duties saw its heydays immediately after the Napoleonic Wars, with almost all shipping countries

besides England adopting it. Actually, however, these countries had a recourse to reciprocal commercial treaties to lessen the effects of such discriminatory treatment, to the result that the discriminating tonnage duties system became nominal. The United States, in 1830, went so far, indeed, as to provide in a law that such tonnage duties would totally be abolished with regard to vessels of such foreign countries, which would afford similar treatment to United States ships. Impetus in the same direction was further given by the repeal in 1849 of the English Navigation Acts. Immediately following her suit, the comprehensive abolishment of the discriminating tonnage duties were carried out in such countries as Holland (1850) and Sweden (1857).

It should be noted here, however, that the neo-mercantilism after the World War I wrought a reactionary effect upon this movement. For example, the United States, in 1920, by virtue of Article 34 of its Merchant Marine Act, adopted a policy which made it feasible to adopt and enforce not only discriminating tonnage duties but also customs duties whenever such was deemed advisable. (Regarding this, the following item would be referred to.)

b) Discriminating Customs Duties.

The discriminating customs duties as referred to here allude to those customs duties, which differentiate between the cargoes carried by foreign ships and national ships, respectively, of which the former will be levied customs duties on a discriminatorily disadvantageous terms as compared with the latter. More specifically, such discriminating customs duties would more often be imposed on imported goods than on exported ones, and it more frequently occurs that those imported cargoes carried by third-party ships in an indirect import are more heavily levied than goods of direct import carried by foreign ships from their origin.

According to Heckhoff,<sup>1)</sup> it was after Henry VIII that such discriminatory customs duties became to constitute the essential part of the measures against foreign vessels. We know, however, that, prior to this, Henry VI's Subsidy Act of 1453 imposed a Foreigner's Duty on sundry woads carried by galleys or carracks. (In England at that time a carrack or galley usually meant a foreign ship.) A subsequent series of subsidy laws, thereafter, discriminated against foreign ships. As instances of such would be cited the law of 1491 (7th Henry VII. ch. 7.) which levied such discriminating duties on imported Malmesey wine, the law of 1508 (10th Elizabeth, ch. 5.) which levied such on various imported fish, and another of 1597 (29th Elizabeth, ch. 10.) which discriminated against imported salted fish.

1) Heckhoff: S. 52.

Historically famous in this connection is the Maritime Law (1st Elizabeth, ch. 13.) of Elizabeth I in the first year of her accession to the throne. As has already been described in the foregoing lines, this specific law served to replace the previous positive shipping policy aimed at the exclusion of foreign ships, with a system of discriminating customs duties. In a sense, it would seem to have been a retrogression of the previous positive policy; however, it should not be overlooked that such was enough to prove the elasticity of the series of policies adopted by Elizabeth I.

One provision of the law stipulated that "export and import by foreign ships would be subjected to the payment of customs duties amounting to double that of such done by national ships."

Perhaps the Subsidy Act of Charles II, 1660 (12th Charles II. ch. 14.), would be cited as an instance of law containing the provisions for the most comprehensive discriminatory customs duties in the modern history of England. Like the Navigation Act enforced in the same year, this Act was to encourage the shipbuilding industry of England by affording those special rights to the ships constructed in that country. There was stipulated that the "customs duties for sundry goods loaded at the place of origin and transported directly to England aboard such ships as were constructed in England would be made less than one-third of ordinary rates of such customs duties." Another provision said that "Foreigners should pay double customs on coal, if exported in foreign bottoms; but if in an English ships only fourteen shillings the chalders. Englishmen exporting coal in foreign-built ships to pay aliens' duties."

One of the most striking cases, thereafter, of such discriminating customs duties would perhaps be the United States immediately following her independence. The same session of Congress of 1789, which enacted the discriminating tonnage duties, as has been described in the preceding lines, had on July 4, just half a year before this, taken steps to establish discriminating customs duties, which provided for 10 percent reduction of customs duties for cargoes imported by American ships, while the law enforced under the date of August 10, 1790, stipulated that a 10 percent additional duties should be paid against cargoes imported by foreign ships. Spain in 1790, and France in 1816, also took similar measures of discrimination.

It would perhaps be said that the development of legislative measures for such discriminatory customs duties has been broadly along the same lines as that of the discriminating tonnage duties. Let us now review the case of the United States. The United States reciprocal act of March 3, 1815, the Anglo-American reciprocal treaty of July 3, the same year, and the United States Shipping Act of March 1, 1817, had a great deal in common

with that they all stipulated that ships of such foreign countries which have not taken discriminating measures against the United States would be exempted from the application of general clauses. Further, on May 24, 1828, it was made known that the scope of such exemptions would be extended and ships of foreign countries taking similar steps against the United States vessels would be reciprocated by not being required to burden discriminating duties, irrespective whether these ships in question were engaged in direct trade or indirect one. It is needless to remind that such was the consequence of the great influence exerted by the English reciprocal act of 1823. It stands to record that other various countries were more or less affected by the gradual changes of shipping policy of England at the time. Thus, as a general tendency, the discriminating customs duties had become more lenient in terms or been abolished outright, either by the conclusion of new commercial pacts or by domestic legislative measures. Below is given a list of the countries, together with pertinent dates, which, besides the United States and England, took steps, then, to abolish their discriminating customs duties :

August 8, 1850	The Netherlands
February 1, 1851	Sweden
February 2, 1852	Belgium
November 22, 1868	Spain
June 12, 1869	Austria
December 22, 1870	Portugal
September 13, 1873	France

The discriminating duties policy is one method of shipping protection. Therefore, the fact that such discriminatory duties tended to be reciprocal in nature bespeaks the lessening of the requirements for shipping protection. The terminology of reciprocal discriminating duties is in itself highly contradictory; the more such tendency is generalized, the less meaning it comes to carry. In this sense, it would be said that the development of the principle of reciprocity in the first half of the nineteenth century was in a large measure affected by the transition of England, one of the foremost shipping countries of the world at the time, from the second type of a shipping country (on the principle of the basis of national economy, and flag discrimination) to the third type (on the principle of common carrier on the basis of international economy and non-flagdiscrimination).

It would be necessary, moreover, that consideration be given to this angle of question on a more general basis and from the point of view of the world history. Attention, in this connection, will have to be paid to the interpretation of Gregg, who asserted that the discriminatory customs, as a system, were, as far as overseas shipping was concerned, only prior

to the common carrier.<sup>1)</sup>

When shipping in general followed the form of private carrier and goods required by a country were obliged to be transported on board its own shipping, all the countries, from the necessity of protecting and maintaining national shipping in proper shape, had to adopt discriminatory duties, highly favorable to national ships and unfavorable to foreign ones. As, however, the form of common carrier gradually became to prevail, utilization of foreign ships proved not only easy but also sometimes more profitable, and it was found sometimes that discrimination against foreign ships was rather detrimental to national interests, or, to say the least, such discrimination ceased to be necessary. It was because of this circumstance that discrimination in customs duties became more lenient in terms or was abolished outright after the latter half of the nineteenth century, while this is the reason why it has been asserted that the essence of the question at issue should be understood from the point of the world history. It should be emphasised here, in this connection, this particular trend in general was never the consequence born of the modification of shipping policy on the part of one country, England.

However, it should be reminded here with emphasis that the above statement is nothing more than a general tendency, the pattern of development being not identical with various countries. As the type of shipping itself differs with different countries, the meaning carried by such discriminating duties differs with different countries. We will here review the subsequent developments witnessed in the United States.

It has already been explained that it was soon after her independence in 1789, that the United States for the first time took legalistic steps regarding discriminatory tonnage and customs duties. It has also been said that these steps, at the time, were for retaliation against England. Soon after the adoption of such discriminating provisions, the United States overseas fleet made a remarkable stride forward. The tonnage of her merchant marine in 1789 stood at mere 123,893 tons, which, after three years, rose to more than 400,000 tons; in 1794, 86% of export trades and 91% of import trades were carried by her national ships.<sup>2)</sup> In the light of these two facts—the establishment of discriminating duties system and the prosperity in her shipping industry—, the American people then tended to link them directly and to have the notion that her overseas shipping industry could attain such prosperity and development as a consequence of the introduction of discriminating customs duties.

1) Gregg, E. S.: A Case against Discriminating Duties, Journal of Political Economy, Vol. 30. Chicago 1922. p.405.

2) Paine, R. D.: The Old Merchant Marine, New Haven 1919. pp. 96-8; Zeis: p. 4.

What, then, were the effects of the abolishment of the discriminatory duties? The merchant marine of the United States, which had shifted to reciprocity in 1815, saw a decrease by about 200,000 tons in 1818. This was naturally interpreted as the direct consequence of the adoption of reciprocal provisions in the discriminating customs duties.<sup>1)</sup>

It is evident, however, such interpretation, based upon an inadequate insight into the natural course of economic development, is wrong. The existence or otherwise of such discriminatory customs duties will never be responsible directly for either the rise or fall of the shipping industry. In general terms, it should be said, according to Zeis, that "the weight of historical evidence is all to the effect that the shipping prosperity before 1860 was produced by causes other than discriminating duties,"<sup>2)</sup> while, at the same time, the fact should not be lost sight of that the decrease of American shipping bottoms in 1818 merely represented a decline in the statistical figures consequent upon the revision of the regulations concerning the registered tonnage.<sup>3)</sup> Especially, the fallacy of the conclusion that the adoption of reciprocal provisions would lead to the decline of American shipping will be amply proven by the fact that the American shipping industry has continuously sustained a general prosperity through years of reciprocal pacts adopted.

The United States at the time of her independence was still largely unaware of the bountiful natural resources in her land and was a country imbued with a mercantilistic tendency, where shipping was considered to constitute one of her most important industries. It was, therefore, a matter of sheer necessity that her shipping be protected from the menace of foreign (English) ships, by setting up highly discriminatory customs duties in favor of her national vessels. The United States was obliged to depend on her shipping for national prosperity and to adopt a system of discriminating duties for its protection. When American shipping seemed by itself to be able to go along the road to further prosperity, these discriminating duties were promptly abolished. Here again, criticisms hurled by Gregg were exceedingly sharp:

"Not only is it impossible to prove that our shipping increased between 1789 and 1818 because of our policy of discrimination, but it can be proved that a considerable increase took place immediately after the abandonment of this policy." "To argue that discriminating duties in such a period were the causes of the expansion of our shipping is as logical as the statement that the La Follette Seaman's Bill made our shipping increase during the late war."<sup>4)</sup>

1) Gregg: A Case against., pp. 408-09.

2) Zeis: p. 58.

3) Gregg: A Case against., p. 408.

4) Gregg: A Case against., p. 405.



However, most people failed to take due cognizance of the immutable historical fact that, following the shift of the weight of American national economy to inland manufacturing industry from shipping, the latter had to gradually lose national attention and was allowed to decline, and, in the firm belief that the adoption of discriminating customs duties once served would bring a golden age to American shipping, its re-adoption was urged for American shipping.<sup>1)</sup>

W. W. Bates was one of the most eager proponents of such proposal. He, a personification of discriminating customs duties, might well have remarked, after the fashion of a French King, "I am the very discriminating customs duties!"<sup>2)</sup> Thoroughly imbued with the notion, he never slackened in his effort to praise discriminating duties and urged for the adoption of them without delay. Many Congressmen of the Republican Party who deeply trusted Bates, eagerly endeavored to revive discriminatory duties in order to bring prosperity to American shipping once again. Senator Frye, one of these men, proposed that a clause for such discriminating duties be inserted to the 1894 Tariff Law, stipulating that 10% additional duty be levied on cargoes imported by foreign ships, while import of goods by foreign vessels engaged in indirect trade should be banned unconditionally.<sup>3)</sup> His proposal, however, was not taken quite seriously.

However, it was impossible for the Republican Party, which had stood steadfastly for a shipping protection, to give up the idea of discriminating duties. In 1896 the Party adopted in its policy platform the setting of such discriminations and the Republican President W. McKinley declared that "the policy of discriminating duties in favor of our shipping which prevailed in the early years of our history should be again promptly adopted by Congress and vigourously is fully attained."<sup>4)</sup> In the following year, Senator Elkins, in his effort to have the discriminating duties bill passed by Congress, went so far as to urge the immediate and outright abrogation of all international treaties and pacts that might conflict with the provisions of the bill. Although the move failed to gain popular support, it was nonetheless always the object of unwavering support in the circles concerned. At a public hearing in 1905 on shipping problems, predominant views were advanced by such men as Charles Cramp and Edward Plummer who were in leading positions in American shipping and shipbuilding industries, that the policy of discriminating duties rather than that of granting subsidies,

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1) Culbertson, W. S.: International Economic Policies, New York 1925, pp. 430-31.

2) Gregg: A Case against., p. 404.

3) Zeis: p. 59.

4) Zeis: p. 60.

should be chosen for adoption.<sup>1)</sup>

However, the United States at the time had to take into consideration the fact that no less than 82% of goods imported from South America, 94% of those imported from Central America, 60% of those imported from China, 64% of those imported from Japan and 69% of those imported from India were non-duty articles. Should such discriminating duties were put into force in spite of these circumstances, all of these articles would have automatically to become the objects of discrimination, resulting in an extensively deep adverse effect which would have meant prompt measures of retaliation on these foreign countries. Thus, the move for the revival of discriminating customs duties had ended in a failure in spite of ardent efforts exerted for the purpose for a number of years. To come at the last of the series of moves for reviving discriminating duties was the so-called Underwood Act of 1913, which, compared with previous bills intended for similar purposes, was much less drastic in its nature, stipulating only that a 5% reduction in the customs duties would be allowed for goods imported by American ships. Even this bill, however, had to be shoved away under the Supreme Court, deciding that it would adversely interfere with the provisions of pacts and treaties with various foreign countries concerned.

Immediately following the termination of the World War I, American shipping literally threatened to surpass English shipping in its tonnages. People had again to revive their old memories. Spurred on by their conviction that good time had arrived for the realization of their long cherished desire, those, in support of the shipping protection policy, did everything in their power for the purpose, and at long last, they were met with success in legalising discriminating customs duties together with discriminating tonnage duties. Sec. 34 of the United States Merchant Marine Act of 1920, provides for :

That in the judgement of Congress, articles or provisions in treaties or conventions to which the United States is a party, which restrict the right of the United States to impose discriminating customs duties on imports entering the United States in foreign vessels and in vessels of the United States, and which also restrict the right of the United States to impose discriminatory tonnage dues on foreign vessels and on vessels of the United States entering the United States should be terminated.

This Article was so thorough in its stipulations prepared for actual enforcement that it further contained the following provision :

The President is hereby authorized and directed within ninety days after this Act becomes law to give notice to the several Government respectively, parties to such treaties or conventions, that so much thereof as imposes any such restriction on the United States will terminate on the expiration of such periods as may be required for the giving of such notice by the provisions of

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1) Zeis: p. 61.

such treaties or conventions.

Actually, Congress moved promptly as the provisions of this Act stipulated, and urged the President of the United States to send the various interested countries the information of the intended abrogation of treaties and pacts concluded between these countries and the United States. President Wilson, however, in utter disregard of the desire of Congress thus expressed, refused to take steps to legalize such discriminating customs duties.

The step taken by the President, however, was not a mere political one. The importance which American shipping industry occupies in the American national economy forced the President to decide on the taking of such a step, even against the desire of Congress. It was hardly necessary for the United States to resort to any fresh legislative measure for the national protection of her shipping. The United States is, in short, not the shipping country of third type.

c) Other Discriminating Treatments.

Besides the discriminating tonnage and customs duties, the discriminating railway freight rates may perhaps be considered to be another method of discrimination against foreign ships. This is a method of discriminating unfavourably against foreign vessels in terms of railway freight rates to the port of export, the preferential reduction of rates being considered in case these goods be shipped aboard national ships. However, discrimination here does not necessarily call for a clear indication of the nationality of the vessels on which the goods be transported; a general reduction of domestic railway rates is often effected in an effort to have a national port chosen as the port of export. This method indirectly affects national ships favorably and is usually resorted to when, as in the case of the European Continent, countries border closely to each other.

Although the application of the method of special reduction of railway rates is never so generalized as the discriminating customs duties, such will be seen in force more or less extensively in such countries as Germany, the United States, France, Spain, Mexico and Russia. Especially wellknown, in this connection, is the method adopted by Germany prior to the World War I for export-goods destined to East Africa and the Levante region. Ships of the Deutsche-Ostafrika-Linie and the Deutsche-Levante-Linie were mainly operated for marine transportation to these areas. German railways, in making reduction of freight rates, did not specifically make it a condition for such that the goods destined to these areas be loaded on German ships, but such reduction, as actually made, served to indirectly induce them to be shipped aboard German vessels. On this Heckhoff says that such was primarily for the purpose of encouraging German export trade but not for

subsidizing German shipping, pointing out that Turkish and Bulgarian ships as well as those of the *Deutsche-Levante-Linie* engaged in export trade to the Levante area and that these foreign ships were equally the beneficiaries of a preferential treatment by German railways in that the freight rates for the goods carried by them were also reduced.<sup>1)</sup> It is undeniable, however, that this method greatly helped German ships in increasing their utilization,<sup>2)</sup> so that it prompted the Committee of Shipping and Shipbuilding set up by the British Board of Trade during the World War I, in formulating postwar English shipping policy, to take up the issue of the discriminatory railway rates employed by the Germans.<sup>3)</sup> And, the conclusion reached by the Committee on this question was adopted at the Versailles Peace Conference without any major revisions, which, eventually embodied in Articles 323 and 325 of the Versailles Peace Treaty, forbade the Germans to employ such discriminating methods after September 1, 1919.

Ironically enough, however, this method—not an indirect one as was employed by Germany described above, but a direct one, in which discrimination was made according to the nationality of the ships used—was formally legalised in the Merchant Marine Act of 1920, Article 28. To explain in explicit and concrete terms: this same Article, while forbidding generally the discrimination of railway rates by re-affirming Article 4 of the Interstate Commerce Act, 1887 (long-and-short haul clause), stipulates additionally that, in case ships which carry the specified passengers and goods were of American nationality, this provision shall not be applied. This is tantamount to an open recognition of discrimination in favor of national ships with regard to the reduction of railway rates.

It has already been repeatedly explained that the United States Merchant Marine Act of 1920 was an embodiment of a mercantilistic shipping policy on the strength of the shipping bottoms suddenly built during the World War I. The provision for the discriminating railway rates was quite another manifestation of such trend. However, it was undeniable that the American shipping, although it was nearly equal to English counterpart in tonnage, was actually quite inefficient and inadequate to carry the entire export and import trades of America. Most of these American ships were of inferior quality constructed under the impasse of the war, and were naturally not entitled to fully engage in long-distance overseas transportation. Thus, it was found necessary, as a matter of fact, that this provision for the

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1) Heckhoff: S. 73.

2) Dussol, A.: *Les Grandes Compagnies de Navigation*, Paris 1908; Jones, G. M. *Government Aid to Merchant Shipping*, Washington 1925. pp. 80 ff.

3) Board of Trade: *Shipping and Shipbuilding Industries after the War*, London 1918.

discriminating railway rates carries an additional provision inserted, to the effect that the Interstate Commerce Commission shall be empowered to prohibit the employment of such discrimination in case the U. S. Shipping Board formally testifies to the said Commission on the inadequacy of American shipping bottoms to be engaged in a specified overseas routes in question. As record stands, moreover, these provisions for discriminating railway rates were actually invalidated when the Shipping Board made a public statement, right on the heels of the publication of the Merchant Marine Act of 1920, to the effect that the American shipping bottoms then available were quite inadequate to carry the entire American foreign trades.

On February 27, 1924, however, the Shipping Board had a whim to declare in another statement that American shipping bottoms were sufficiently adequate to carry the entire American foreign trades. The consequence was that the Interstate Commerce Commission was obliged to have the provisions for discriminating rates automatically invoked, and had to announce that the provisions in question would be considered valid after March 20, 1924 (later changed, after June 20 of the same year). During several years interval between the first statement and the second, no radical changes were witnessed in American foreign trades, while it must be admitted that American shipping bottoms had during the same period actually decreased rather than increased. Seen from this angle, a satisfactory explanation of the circumstances leading to the second statement, containing a radically different content as compared with the first, would seem quite hard to make.

It was ironical that while exporters were generally supposed to benefit the most from the invocation of the provisions for the discriminating railway rates, they were the very persons who most strongly maneuvered against them. The reason for this, probably, was that a small benefit resulting from such discrimination would be more than counter-balanced by the financial blow they had to expect to come upon their shoulders from the necessity of having their goods loaded on American vessels exclusively. In consideration of such oppositions, the Shipping Board on May 8, mere two months after it had made a statement that American shipping bottoms were adequate to carry the entire American foreign trades, had to revise it by confessing that, in spite of its previous statement, the Board was not quite sure of the capability of American shipping. Ever since then, this provision for discriminating railway rates has never been actually put into force in the United States.

As other methods of discrimination against foreign ships, those of discriminating canal passage charges, compulsory use of national ships by officials and passengers in general, discriminating treatment of water supply

and coaling services and immigrant control stations, etc. would, perhaps, be cited. No space, however, is now available here to discuss each of these various methods.

My treatise "System of Shipping Theory" concludes with this number. The study about shipping finance or maritime credit as one of the methods of shipping policy, observed from the view point of "three types of shipping country," will be published in another chance.