

Sea and Air Transport Woes: Cabotage Rights - “A Silver Lining.”

Dr.Vaman Bajnath

Abstract:

Stakeholders are appealing for transportation relief while demanding some long-lasting solution on the sea and air bridges between the islands of Trinidad and Tobago. We are of the opinion a review of the cabotage law might very well be the prospect of hope to alleviate future transportation aggravation.

Keywords: Sea and Air Transport Woes; Relaxing Cabotage; Eliminating Cabotage

Introduction:

The recent upheaval by stakeholders highlighting the sea and air transport pains between the twin island nation of Trinidad and Tobago (T&T), a mere 30 kilometers apart (18 statute miles), is now critical. The chaotic bridge situation uprooted more aggression with users demanding permanent solutions. Media reports spotlight saboteurs lurking in disguise, innuendoes of suspicious lease arrangements, and the wrong vessels with insufficient capacity, astonishingly longer journey times, repeated breakdowns, disgruntled seaport workers, political interference, unexplained cancellations and so forth are linked somehow to the disruptions of scheduled sailings between the islands. To see firsthand on what the fuss is all about, in June 2017 the Prime Minister of the nation made a surprise sea bridge journey to Tobago. The substitute air bridge, served by the one and only national airline, is another bugbear. The flying public must put up with frequent and abrupt flight cancellations, poor service, and not enough available seats, particularly during holiday and peak season. In July 2017, the national airline pilots union reaffirmed their disgust with the airlines' maintenance of the domestic short range jet propeller airplanes and vowed to add further aggravation to the mass chaos.

The fallout from both transportation mechanisms have negatively impacted Tobago's domestic economy, more precisely, the dependent tourism sector. Apart from all the common noise that is blasted on the media, smarter customers plead for more and better choices while business conscious lobby groups clamour for more efficiency. Government agents frequently attend to damage controls on these vital domestic transportation linkages while struggling with ideas for speedy resolutions. The nation's lower revenues have added more pains to the current debacle for any kind of domestic project improvement or sustainability. Ultimately, this pressure has placed a stranglehold on the air and sea bridge. With the projected incremental growth in domestic movement of people, goods and services in the coming years, the probability is high for the bridge worries to re-occur. Consequently, the time has come forth public debate on one unexplored fundamental element, the restrictive air and sea cabotage rights between the islands. The review of this law might very well be the “silver lining” to alleviate future transportation aggravation.

Within the past two decades this regulation has been debated universally, going in-depth on discussions into elements of domestic economic policy, international trade policy, national security, local economic development, labour issues etc. Extracting opinions from that deliberation and for simplicity in grappling with the concept, we have stayed away from the “nuts and bolts” of the law. Hence, the purpose of this

paper is to bring to the forefront macro viewpoints on relaxing or eliminating these customary non-negotiable freedom rights. To understand such angles, we looked at a general overview of the deliberation of the cabotage law in emerging and developed jurisdictions and emphasized its' positive outcomes and shortcomings. The central question remain: Is the repeal of cabotage a potential solution to the inter-island transport problems? The research methods include a mix of the descriptive and numerical data sourced from government publications, the author's previous publications referenced below, established literature, country cases and contemporary issues from local and foreign media. We begin by first unfolding the briefer history and a simplified description and operation of this rather convoluted topic. This is followed by country debates on some of the most significant elements influencing reform of the law or otherwise and finally evaluating the possible outcome with some recommendations for Trinidad and Tobago. We hope other territories may consider this examination a useful guide.

Historical background on the Cabotage freedom of right:

With respect to air transport, countries have exclusive sovereignty over the airspace above their territory. As set out in the 1944 Chicago Convention on international civil aviation, states grant "special permission" or authorization to other states to operate scheduled international air services into their territory. These permissions are granted in bilateral air service arrangements. Countries then exchange treaty rights bilaterally with one another that allow airlines to fly internationally. There are also multilateral air service agreements and associated arrangements that have been concluded between groups of countries. Alternatively, the Chicago Convention says that a state "*shall have the right to refuse permission to the aircraft of another contracting State to take on in its territory passengers ... destined for another point within its territory.*" This cabotage law, "*the right to refuse permission,*" is the one we are mostly concerned with. It was crafted as a protectionist mechanism for nations.

Cabotage exists between the islands of Trinidad and Tobago. It is the right to operate sea, air or land transport services within Trinidad and Tobago by registered air/sea/and land carriers of Trinidad and Tobago and granted by the Government only. The allowable rights for foreign registered carriers or foreign registered vessels to operate within the domestic environment are also known as "cabotage." It is a right or freedom that is rarely granted or exchanged between countries. The government can restrict the operation of sea, air and land transport services within or into the country by operators from another territory. For that reason the air/ sea/ and land transport cabotage law prohibits the transportation of persons, property, or mail for compensation or hire between points of Trinidad and Tobago in **a foreign** civil aircraft, sea vessel, or other mode of transport. Foreign includes all aircraft/ sea vessels or other mode that are not of Trinidad and Tobago registration except those foreign-registered "transporters" leased or chartered to a Trinidad and Tobago air/sea or other mode carrier and operated under the authority of regulations issued by the government. Consequently, the following country examples can possibly guide us to shape a working model between Trinidad and Tobago.

The international analysis:

In 2015 the Philippines recognizing the benefits to a non-restrictive cabotage law, decided to take a bill to their Congress to liberalize the cabotage rights within their archipelagic nation. Under the relaxed cabotage local traders and consumers can benefit from lower costs in domestic shipping services by liberalizing the entry to foreign vessels to traverse between the ports in the country. Foreign vessels can co-load foreign with domestic cargoes for transport between islands. They recognized that co-loading can not only result in cheaper cost of shipping but also aid in decongesting the ports. Any cost and time benefits from this measure will ultimately benefit the Filipino citizens. Therefore, relaxing a restrictive cabotage policy can assist importers and exporters to enhance their competitiveness considering the intensifying international trade that is growing. With foreign competitors, there is the added advantage to

lower the transport cost of agricultural and industrial products, spur tourism, and increase revenues through the entry of foreign port operators. From this initiative we can gather that it might be the incapability of the domestic transport sector to provide the demanded quantum of services at competitive prices. Consequently, for the Filipinos repealing cabotage is seen as beneficial because it helps to relieve the bottlenecks in their domestic transport sector.

In contrast, lifting the country's Cabotage Law, which will now relieve local shipping operators from the exclusive rights to ply Philippine waters, could spell disaster to the already distressed shipping industry of the country. This warning emanated from the Philippines Department of Transportation and Communications (DOTC). The DOTC report professed the Philippines may end up like Indonesia, also an archipelagic country, where its shipping industry has slumped close to nearly dead after it allowed the entry of foreign players. A Maritime Industry Authority briefing paper on the "Pitfalls and Fallacies of Lifting Cabotage in the Philippines" reminded the private sector who are advocating the relaxation of the cabotage law that they should "seriously study" the experience of Indonesia. When that country opened-up its coastwise trade to foreign shipping investors, it only resulted in a period of stagnation of the Indonesian shipping industry that prompted its government to restore the law.

The Philippines, an archipelagic nation like the Caribbean Community (CARICOM), is also heavily dependent on the aviation industry for connectivity to move people and goods. The country is linked to global markets and to overseas Filipino workers via air connectivity. The Filipino workers contribute 11% of the country's GDP. Meanwhile, 72% of total export earnings such as commercial crops are transported via airways. An executive order signed in 2011 allows international carriers to service the Philippines' secondary gateways, which was a giant leap toward better connectivity.

Likewise, Australia who is already the world leader in the liberalization of its domestic aviation market proposed in 2015 to seek further expansion of the cabotage geographic boundary in the North above the Tropic of Capricorn. The proposal would allow more foreign airlines to carry domestic passengers between Australian airports. The intention is to boost tourism, and transport cargo and passengers on poorly served routes for certain areas. The government robust negotiations with new partners and for new routes well in advance of demand has positioned the air transportation industry on a sound footing for the future. Of course, the national air carriers have posed some objections to these latest moves claiming it would have damaging consequences for them.

With respect to sea cabotage, an Australian Productivity Commission report specify to improve the efficiency of coastal shipping services, barriers to entry for foreign vessels should be removed to allow greater competition. Current coastal shipping regulations which give preference to Australian-flagged ships for transporting domestic cargo between Australian ports increase costs for farm businesses reliant on sea freight. Once again, as in the Philippines, we can gather that it might be the incapability of the domestic transport sector to provide the sea transportation demand.

In the USA, stakeholders had similar concerns on cabotage reform. They were divided into pro-cabotage and pro-reform. The pro-cabotage were concerned with the ongoing professionalism of the crew that operated sea going vessels and sustaining such professionalism in an already controlled environment. This concern extended to the shipbuilding industry where ships built were of a high standard to maintain professional skills. With respect to the defense of the nation, national security took priority so having a ready USA commercial ship reserve was paramount. These defense interests wish to maintain shipbuilding skills, ships, and crew for the ready reserve. The environment was another argument with the increase in vessels on the coastal boundaries if it were to be relaxed.

However, the pro-reformers argued for economic gain from more tourism. There would be more competition for the shipping industry creating more jobs and even the employment of cheaper crew and

the introduction of more economic ships. As in the Philippine case, pro-reformers pointed out the agricultural interest groups believe that cabotage reform will lead to lower shipping and freight costs for their goods. Additionally, businesses and business owners would like more choice in investment; while foreign flagged operators would like more choice in itineraries for their U.S. passengers.

In the US territory of Puerto Rico, an island in the North East Caribbean Sea, the Cabotage laws only allow USA registered ships to deliver goods to the colony island. In July 2017 a RT NEWS documentary, "Puerto Rico: Anger on the Island," reiterated the sea law has contributed to average retail prices being 20% higher. The residents often complain of high grocery prices, sometimes some basic items as much as 50% higher than in Miami. They claim it has become too expensive for them to survive. However, according to the documentary the research shows without this law it is estimated Puerto Rico could save almost a US\$1 Billion each year. Recall, the U.S. Airline Deregulation Act of 1978 set the tone for free and opened up market competition. This led to rise in efficiencies, innovative strategies, lower fares, new entrants and increases in demand for travel in the USA. After deregulation, by 1984 the number of scheduled interstate carriers had increased from 36 to 123. New carrier entry put downward pressure on fares. New entrants strongly contributed to 3.2% average annual employment increase from 1979 to 1990.

Evaluation for Trinidad and Tobago (T&T):

The above debates provide the two fundamental sides of the divide on whether to relax/ eliminate or keep the law. One definite aspect of lifting the law provides the opportunity for additional essential sea and air services while at the same time shifting the financial burden away from the state by farming out to private partners. When we look at a similar model in Trinidad and Tobago where the state provides land and water taxi services (all of which is cabotage) we see it quite successful with bus/ water taxis working alongside private taxis even though the private for hire charges a lot more. Still, whether at peak or off-peak travel times, the choice of state providers versus private is welcomed. We can similarly adopt the same type of alternative model for the sea and air by giving choice to the customer even if it costs more. The state can maintain their subsidized services while at the same time compete with entrepreneurial citizens of Trinidad and Tobago or whoever can make an entry.

According to Melton (1975) initially cabotage regulation was not conceived in a vacuum. It was in the response to economic and political needs, and before regulation is discarded careful study of its economic and political consequences should be undertaken. While this paper suggest to introduce more transporters, left to their own ends to compete, with chaos playing out in the rigorously competitive market, Melton believes the inevitable could result in collusion, merger, and finally making a full circle and ultimately revert to a monopoly and the old status quo. With unregulated monopoly being the most intolerable of all states, regulation will evolve over time to a point where it may become necessary. Therefore, we suggest to government to impose a minimum of regulation which is always to be tolerated to prevent the rise of "destructive" competition. So we get what Melton refers to as "regulated competition." If "regulated competition" were abandoned and competition relied upon completely, the result would be the end of the common carrier for the common carrier is not basically competitive by nature.

We recognize the globalization virus is a facet of the new business culture spreading to each corner of the globe and deregulation and freer skies policies is a possible solution in T&T and even in the Caribbean for ailing industries. In the USA and Europe deregulation brought efficient management practices and also higher quality services to customers (Duke and Torres 2005). Note, however, increased domestic and international flows affect domestic policies. The political landscape will change. The Nation will lose a notch of competition policy sovereignty in responding to political-economic incentives (Bajnath 2016).

It is a fact that the current domestic transport sector between Trinidad and Tobago is incapable of providing the demanded quantum of services. If we investigate further, maybe the problem is simply, inter alia, lack of private sector participation coupled with inefficiency of state enterprises. Consequently, thrusting new entrants on to an inadequate and inefficient infrastructure and domestic economic and political environment is hardly likely to solve the transport problems in the short term. And who knows, the new entrants may eventually pull out in frustration. The recent case of Red jet low cost airline shutdown blamed their failure by being bogged down by regulatory encounters and the difficulty in securing route expansions. The airline found itself in jeopardy of maintaining its mandate of providing affordable air transport for Caribbean people. The airline revised their planned launch dates multiple times and eventually the burdening circumstances led to its financial demise in 2012 (Bajnath 2017).

Therefore, considering the potential benefits and all the worst case scenarios, it would be wise before we consider lifting the law; deeper investigation is required on the sustainability of such a proposal. As such we must consider amongst other concepts the following issues: developing infrastructure capacity, social versus private profitability and the trickle down effects, state aid and its restrictions, increasing efficiency and productivity, human development, accessing capital, collection of revenues, taxes and charges, expansion of information technology and communication, the regulatory environment and so forth (Bajnath 2016).

For such a model to be adopted there must be the complementarity between the state agencies and the substitute modes of transportation. Transport would need the support and installation of other harmonizing policies since the transport sector does not operate in a vacuum. It is beyond the scope of this paper to discuss other policies that will complement the transport policy. Some control can be maintained on the number of new entrants, that is the so called ‘regulated competition.’ This would be necessary to constrain the fallout of business failures, plus the social and environmental impact. So, establishing regulatory and policy standards will be priority. The above models for instance from Australia and the USA can provide some universal guidelines. Under the present system any T&T national/ citizen can approach the authority and set up a competing business against the state operators if the company is registered and has its headquarters 100% owned and operated in the state of T&T. The state can provide dispensation in certain areas for relief in start-up. For example, allowing companies to foreign ownership by percentage limits under a revised cabotage law. Outsourcing can work in an equivalent way.

Currently the transportation experience is not good between the islands. This can chase away potential visitors. The Tobago Jazz Festival in 2017 tagged its failure to the frustrations with travel between the islands. The Ministry of Tourism recently raised these issues in a public forum; however, just repeating the issues will not fix anything. Connecting to international flights to and from Tobago is a nightmare. All sectors connected to the transportation business are also vital for the reform to take place. The size of the nation, the data on the volume of yearly travelers and its growth factor and the fact it is only twin islands will dictate the number of carriers be allowed to move persons on the bridges. The question of too much business rivalry arises to the tipping point of wastage of state and entrepreneur resources and the resultant fallout from the real possibility of business failures.

Conclusion and Recommendations:

This paper brought to the forefront the recent clamoring for improvements in efficiency and supply both on the air and sea bridges between the islands of Tobago and Trinidad. It raised the question of whether cabotage should be relaxed or eliminated. The paper researched broad issues and commented generally on the pros and cons based on experiences in some emerging and industrialized countries. Based on the above case examples that highlighted the issues which caused those nations to drive for change, some of

which we have in common, we are of the opinion that relaxing or eliminating cabotage law, can bring relief in the transportation woes between the islands of Trinidad and Tobago. Certainly, it would require much more analysis than this paper contains. What we need to do is debate the unique factors and specific circumstances for the islands of Trinidad and Tobago for and / or against the lifting of cabotage. We would need to find out if this is really a solution to the country's transport woes. What are the chances that cabotage deregulation will work? What will be required for it to work? What are the likely consequences? Until this is done, then we can inform the population on a roadmap to a domestic transportation policy.

It is a reminder to the government, non-governmental businesses, chambers of commerce and citizens of the urgency to discuss how relaxing or eliminating cabotage rights might benefit the local economy. This discussion is in alignment with the current bigger conversation on the importance to divest the economy away from the finite asset of oil and gas and to seek other avenues of foreign exchange, for instance in the transportation service sector. Since the domestic aviation industry and sea bridge is inefficient and without competition it would be incumbent upon the government to revisit the restrictions on cabotage and how it can be revised to bring relief to users. For such projects to make headway government intervention is paramount. The air and sea industry still looks and behaves like an infant industry. The industry has never really grown when compared to other global regional blocs of similar existence such as in Europe, United States, India, China and the ASEAN. The infant industry argument is potentially a valid argument for the government to do something to assist the transportation industry because the future benefits can be larger than the current costs of doing so.

There is the need to find a balance between protectionism and the ease of the law for the sake of giving in to the economic welfare of the ones most affected. We expect labor concerns and protectionist sentiments joining with increased national security concerns to support the status quo. However, globally we are witnessing commercial interests and various government agencies joining a global impetus for transportation liberalization. That means working out the positive and negative impacts of relaxing the law and exploring how much impact it will have on the local economy. Statutory Authorities are already in place and functioning so it is a matter for government to get them involved to engage the idea of repealing the law governing the entry of private businesses.

Meanwhile, without lifting cabotage law, the government can introduce competitors on temporary licenses to relieve the ongoing stresses. Consumers right to choices is the trend. At the macroeconomic level, the transport sector provides employment, tax revenue to the government, and demand for goods and services. The transport sector has enabling effects. These include facilitating access to markets, people, capital, ideas and knowledge, labor supply, skills, opportunities and resources. In turn the economy provides capital and generates demand for passengers and freight travel. It is incumbent on the government to hold a public consultative process. The report which includes the views of all stakeholders be taken to the Legislature for debate. Now that we have highlighted and elevated the critical issue of domestic transport between the islands, maybe other parties will come forward to offer some solid literature and numerical data to push this proposal for study.

About the Author

Vaman Bajnath is a former BWIA Airline Pilot of 35 years, of which 21 years served as Jet Captain on DC9, MD80, L1011-500, and A340-300, flying regularly to Europe, N & S America, & the Caribbean. He holds an Executive Masters of Business Administration and a Doctorate of Business Administration from the University of The West Indies (UWI), St. Augustine.
Email: bajair1996@gmail.com

List of references:

- Adrangi, B., G. Chow, and K. Raffee. 1997. "Airline Deregulation, Safety and Profitability in the USA." *Transportation Journal* 36(4): 44-52.
- Bajnath, Vaman. P. 2016. "Is There A Regional Airline Market Monopoly On Air Ticket Prices? - Inspecting the established notions, forces and factors driving ticket pricing behaviour." *International Journal of Scientific & Engineering Research*, Volume 7, Issue 7, July-2016. ISSN 2229-5518 Paper ID: 1087305
- Bajnath, Vaman. P. 2016. "Towards Developing Air Transportation Logistic Framework for a Re-Positioned Economy: Moving Away From the 'Quasi-Stationary' Paradigm." DBA Dissertation. The University of the West Indies, St Augustine.
- Bajnath, Vaman. P. 2017. "Caricom Aviation in a Holding Pattern." *International Journal of Research in Management*, Issue 7, Vol. 1 January 2017. ISSN 2249-5908
- Clougherty, J. A. 2001. "Globalization and the Autonomy of Domestic Competition Policy: an Empirical Test on the World Airline Industry" *Journal of International Business Studies* (Third Quarter 2001): 459-478.
- Duke, J., and V. Torres. 2005. "Multifactor Productivity Change in the Air Transportation Industry." *Monthly Labour Review*. Accessed January 25, 2011. <http://www.bls.gov/opub/mlr/2005/03/art3full.pdf>.
- Julien, Joel. 2017. "Slow Crawl to Tobago: PM in surprise ride on Express experiences...." *Trinidad Guardian*. Monday June 05th.
- Kim, H. Lisa. 2011. "Better Air Connectivity Needed to Boost Tourism, Economy in the Philippines." In *ASIA*, August 24. Accessed August 26, 2011. <http://asiafoundation.org/in-asia/2011/08/24/better-air-connectivity-needed-to-boost-tourism-economy-in-the-philippines/>.
- Magee, Kathleen. US Cabotage Laws: Protective or Damaging? Retrieved August 03, 2017. http://www.commercialdiplomacy.org/ma_projects/magee2.htm
- Melton Jr. J. Lee. 1975. "The Competitive Transportation System: A Myth." *Transportation Journal* 14 (4): 48-55.
- Ramdass, Anna. 2017. "PILOTS BLANK CAL.*Concerns raised over ATR aircraft on air bridge, Caribbean routes..." Published on Jul 15, 2017. Source: <http://www.trinidadexpress.com/20170715/news/pilots-blank-cal>
- Reggiani, A., Peter Nijkamp, and Alessandro Cento. 2010. "Connectivity and Concentration in Airline Networks: A Complexity Analysis of Lufthansa's Network." *European Journal of Information Systems* 19: 449-461.
- RT NEWS. 2017. "Puerto Rico: Anger on the Island." July 11. Documentary.
- The Manila Times. 2015. "Philippines: Embrace open seas policy, relax cabotage." June 11. <http://www.manilatimes.net/embrace-open-seas-policy-relax-cabotage/190931/>
- The Maritime Executive. 2017. "Australian Cabotage Criticized in Agriculture Report." March 29. <http://maritime-executive.com/article/australian-cabotage-criticized-in-agriculture-report>
- Thompson-Forbes, Cassandra. 2017. "Truckers Upset at PM's Snub." *Trinidad Guardian*. Monday June 05th.