1

Between Tax Havens and Flags of Convenience:
Handling of Cargo in Brazil and at Paranaguá Harbor[1]

Luís Alexandre Carta Winter[2]

Marcos Wachowicz[3]

Abstract:
Analysis of the concept and effects of tax havens in general and in Brazil as well as the flags of convenience and their impact on the handling of cargo in Brazilian harbors and at Paranaguá Harbor. Survey of the countries considered tax havens and those that use the flags of convenience. Measures to fight against such sort of practice. State sovereignty. The role of OECD and of the Paris MoU on Port State Control. ANTAQ and the National Confederation of Transporting. UNCLS I and III.

Keywords:
Tax Havens; Flag of convenience; Long-haul navigation; Cargo handling in Brazil; Paranaguá Harbor.

Summary:

[1] Article Published in the book organized by Pedro Borges Graça. (Org.). New Challenges of The Atlantic. 1ed.Lisboa: Editora GRAFIGRAF, 2015, v. 1, p. 47-61.

[2] Professor of the Master's Degree and Doctorate Program at PUCPR (BR). Professor at Unicuritiba and at Faculdade da Indústria do Estado do Paraná (BR). Coordinator of the NEADI.

[3] Professor of the Master's Degree and Doctorate Program at UFPR (BR). Coordinator of the GEDAI.

1. Introduction

International trading follows inexorable logics: the added value. The aim is to limit costs and maximize profit. This means to pay the lowest amount on taxes possible, and parallel to that, manage to lower the social charges but with no need to lower the final price of the product for the consumer.

Thus the target is to increase the percentage of profit. Intrinsically there is nothing wrong with such capitalist logics, but this is only a finding. The current article aims to translate such a finding by analyzing within the capitalist system two aspects and the impact that these questions cause on the international commerce.

Tax havens and flags of convenience arouse from various needs within the international trade and, together they are responsible for considerable portions of the international trade. The manifestation of this is the handling of cargo in Brazilian harbors, particularly at Paranaguá Harbor, of ships from countries that are not only flag of convenience ships but also come from tax havens.

2. Tax Havens: differentiated parameters for conceptualization and configuration[4]

As an objective parameter, the site of an offshore company, which is managed out of Brazil but advertises its products here, gives a precise definition in a rather simple and straightforward way on what tax haven means and the differences between tax avoidance and tax evasion, demonstrating the advantages of investing legally on a tax haven country.

It defines tax haven as:

> *Any country that does not apply taxes over income, or that applies taxes at a rate below 20% (according to the Brazilian standards). ... tax havens may be used in licit form. The tax payer has the right to seek legal ways to reduce his tax burden, as much as the so-called tax havens have the right to organize their economy in order to attract foreign capital. Therefore, we should set the difference between tax avoidance and tax evasion. Tax avoidance is a way to lower the amount to be paid on taxes through various legal means by performing a tax paying plan, while tax evasion is an illegal way of omitting the payment of taxes that are dully applied. Any financial operation performed in a foreign country must be declared. It is important to know the legislation of the countries involved, for what is legal in one country might not be legal in another. The use of tax haven countries in a legal form may happen through structures*

[4] Updated adaptation of an extract of the thesis for contest for the post of head professor at PUCPR, 2010. The full piece of work has been sent to the U.S.A for publication and it is still unpublished.

aiming at tax payment plans, structures for inheritance planning, asset protection, offshore investments, partnership holdings, copyright patents and royalties holdings, among others (according to the legislation of the country in question).[5]

The British newspaper “The Economist” used the definition by Geoffrey Colin Powell, ex Economy Advisor of Jersey Island: "What identifies a certain area as being “tax haven” is the existence of a set of tax structural measures deliberately created to take advantage of and explore the global demand of opportunities to involve in tax evasion". The Economist highlights that through this definition several regions traditionally considered “tax haven” would be excluded[6].

Similar situations to the current so-called tax haven are, according to Helcio Kronberg, as old as taxation itself.

The existence of warehouses in tiny islands close to the Greek ports where the ships were supposed to harbor, consistent in storage to avoid the taxation by 2% over the goods at landing, as well as the tax benefits offered by Flanders, Belgium, the Netherlands and, later on – precisely after the Second World War –, by France, for instance, point to the old age of this phenomenon.

However, the standard form of production of various sorts of goods, as well as the decrease in costs of transportation and its improvement, the technology revolution and the lowering of customs tariffs by means of international treaties focusing the integration of markets were some of the factors that widely contributed to the circulation of goods and, consequently, of capital and services – which fueled the competition and market share dispute in a global scale.[7]

Many are the ways through which the tax evasion can be noticed, and the most frequent ones can be easily seen through the manipulation of transference prices between headquarters and branches, as they are followed by what is called “bicycle operation”, that is, operations of tax remittance that are not declared to the local tax authorities, using the parallel market, taxes that return through offshore corporations[8] situated in countries whose tax policy is based on the damaging fiscal competition regime.[9]

---

[5] http://contabancariaoffshore.com/Lista-de-Paraisos-Fiscais.htm access on May 9th, 2014.

[6] http://melloassociates.weebly.com/paraiacuteso-fiscal.html access on May 13th, 2014.

[7] Considering the historical evolution of the phenomenon of tax havens, see KRONBERG, Helcio. **A livre circulação de capitais no MERCOSUL**. São Paulo: Hemus, 2003, p. 81-84.

[8] An *offshore* is a company situated abroad, subject to a differentiated legal regimen, and extraterritorial in relation to the domicile country of its associates. It is fair to clarify that the international financial centers differ from the offshore financial centers, as once in the former we can see the existence of headquarters of multinational corporations – usually in jurisdictions where high levels of taxation prevail, such as London, New York or Tokyo – while in the latter only branches are established for tax planning ends. Confidentiality is the main attractive issue of an offshore center, once in many of these jurisdictions there is the admission of partnership formations with bearer bonds, therefore ensuring discretion because the resources deposited in the offshore centers are not declared to the tax authorities. See KRONBERG, *op. cit*., p. 116/119. POLAK, S. Constituição de companhias *Off-Shore*. **Revista Contábil & Empresarial**. Available in: http://www.netlegis.com.br/indexRC.jsp?arquivo=/detalhesDestaques.jsp&cod=11668. Access on September 5th, 2014.

[9] KRONBERG, *op. cit*., p. 83.

A posteriori, the amounts are repatriated for sake of foreign investments, in order to soften or even to suppress the fiscal incidence over such values.

In summary, damaging fiscal competition occurs when outstanding or unjustifiable fiscal advantages become the main reason for the location of an activity or income.

For Vallejo Chamorro, the increase in importance of the phenomenon of the so-called tax havens is the result of basically two factors, which at times arouse either from the capital flow liberalization, or from the internationalization of economy: on one side a high volume of financial resources susceptible to being sent to those destinations that offer the best inversion conditions (profitability); and, on the other hand, a qualitative quantitative important offer of preferential regimes that are attractive in terms of taxes.[10]

Concerning the first factor, it is known that the notable growth of international economy, since the late 1970s reveals a considerable fracture line in the process of financial liberalization. That is explainable.

While capital has become basically completely immobile, the systems to track the international flow of money coming from illegal acts are almost all from a national basis.

Therefore, the considerations by John Christensen, economist and secretary-general of the Fiscal Justice Network, points to the fact that it is not surprising that the result has been a massive growth of the international flow of money that is illegally set – many times in the form of false sales slips and alterations in the setting of prices of transference between subsidiaries of multinational companies.[11]

Concerning the second factor mentioned, one should highlight the existence of a collision of intentions and interests that, under the view of José Carlos de Magalhães, it has been hard to solve.[12]

The State, dependable to the principle of territory jurisdiction and to the limitations deriving from them, cannot interfere on the decision of a company in terms of reinvesting the profits of the subsidiaries established abroad, especially before the legitimacy that faces the laws of the place where they operate.

However, the intention to control exported investments is grounded on considerations of a political, strategic or defensive order, which according to the author above mentioned, is based on the foundation that the national wealth, exported by means of investment, must always serve the aims of the State – or, in general terms, the national community where it originated.[13]

Magalhães goes ahead in his analysis, highlighting the other aspect of the matter, which is, the one on the jurisdiction or on the country hosting the investment.

According to the author, it is not only with the control to access capitals that the intention of the recipient States to regulate the action of the foreign investor can

---

[10] According to CHAMORRO, *op. cit*., p. 148.

[11] According to CHRISTENSEN, John. Tax havens and corruption – a global fight. **Observatório da Cidadania** – Instituto Brasileiro de Análises Sociais e Econômicas, Rio de Janeiro, 2007, p. 40.

[12] Ver MAGALHÃES, José Carlos de. **Direito Econômico Internacional**. Curitiba: Juruá, 2008, p. 250.

[13] Magalhães points out, indeed, the fact that investments in countries that are considered enemies or with those where there are no friendly relations have been forbidden, based on the foundations shown above. MAGALHÃES, *op. cit*., p. 250.

be over. In this fashion, *"the admission of foreign resources is linked with the State's need of development that the private company can offer with the transference of capital and technology."*[14]

This is linked, thus, to the maintenance of free competition, whose effect would not be any other but to encourage foreign investment and to promote, consequently, the local development through several aspects.

Bearing that in mind, the possibilities offered by tax policies applied in certain countries and territories allowed for the most negative aspects of the tax competition mentioned above to reach alarming levels of revenue loss, which has been subject of various studies on the current situation and the possible adoption of corrective measures.

A proponent of such studies is the Organization for Economic Cooperation and Development – OECD. Launched in 1998, the performance plan of OECD on the problem in question had a gradual range growth in order to include 100 countries, aiming to develop a global map of the so-called tax havens and to have the commitment of the jurisdictions approached so to increase their transparency standards and exchange of information.[15]

Therefore, one of the central issues approached in April 2009 by the 2009 G20 London Summit was effectively the complex problematic point arousing from tax havens. Participants of the G20 London Summit included the G7 leaders, the group of richest countries in the world (United States, Japan, Germany, Great Britain, France, Italy and Canada), the emerging powers of the so-called BRICS (Brazil, Russia, India, China and South Africa), plus Saudi Arabia, Argentina, Australia, South Korea, Indonesia, Mexico, Turkey and the European Union. The British government also invited to the meeting Spain, the Netherlands, Ethiopia – representing the African Union – and Thailand, which represents the countries of the ASEAN (Association of Southeast Asian Nations).

According to the parameters of the OECD,[16] a tax haven is the State or territory in whose jurisdiction we can notice a tax dumping or absence of taxation of some or all taxes that are usually applied.

In such cases, there are three factors used for the characterization of a tax haven:

1) no taxation or imposition of taxes that are only nominal (although this criterion is not enough by itself to lead to the characterization of a tax haven. As the OECD recognizes that each jurisdiction has the autonomy to determine the imposition of tributes and, in affirmative case it can determine the corresponding aliquots and calculation bases, other criteria of analyses are used for this consideration);

2) the lack of transparency (in the sense of existing laws or administrative practices that disturb the efficient exchange of information aiming at taxation with other governments and on tax payers);

---

[14] MAGALHÃES, p. 258.

[15] For more details see *Tax in a Borderless World: The Role of the OECD*. Disponível em: www.oecd.org/ctp. Access on September 5th, 2014.

[16] The information available in this paragraph can be checked at http://www.oecd.org/dataoecd/38/14/42497950.pdf. Access on September 5th, 2014.

3) the absence of a substantial activity (the lack of such activities suggest the existence of a niche of external investments towards the default of tax payment in their countries of origin or even for money washing).

As a whole, and based on the report of April 2, 2009 – updated on November 5, 2010 –, the OECD characterizes as tax haven in a damaging regime: Liberia, Montserrat Islands, Nauru, Niue, Panama and Vanuatu.[17].

Another parameter for classification and analysis is the one used by *Receita Federal do Brasil* (the Brazilian tax authority).

According to the 1st article of *Instrução Normativa RFB nº 1,037 of June 4th, 2010*, tax havens are the countries of dependencies that do not apply taxes to the income or that apply taxes to a level below 20% (twenty per cent) or, yet, those whose internal legislation does not allow access to any information related to the shareholding composition of judicial persons or to its ownership.

According to Helcio Kronberg,[18] some essential characteristics are added to those already mentioned, in order for a tax haven country to be called so.

They include the political/legislative and social stability; protection to a rigid banking and commercial secrecy; a very well-equipped infrastructure (transport, communication network); availability of financial and professional services (lawyers, accountants and capable auditors); and international standards of regulation and banking and financial supervision, as well as absence of money exchange control. At this point, we can see a considerable rigidity of classification criteria used by the *Receita Federal do Brasil* when compared to the parameters adopted by the OECD.

The OECD considers the following countries as "tax havens[19]":Andorra; Anguilla; Antigua and Barbuda; Dutch Antilles; Aruba; Bahrain; Barbados; Belize; Campione D'Italia; Cyprus; Singapore; the Bahamas; Djibouti; Dominica; United Arab Emirates; United States (no tax is collected from residents that have lent capital to another country, which stimulates the investor to apply interest in his own economy); Federation of San Cristobal and Nevis; Gibraltar; Granada; the Netherlands; Hong Kong; Autonomous Region of Madeira; Isle of Man; Niue; Bermuda; Cayman Islands; Cook Islands; Canal Islands (Alderney, Guernsey, Jersey and Sark); Marshall Islands; Mauritius; Montserrat Islands; Turks and Caicos; American Virgin Islands; British Virgin Islands; Labuan; Lebanon; Liberia; Liechtenstein; Luxembourg (considering the holding societies, in the legislation of Luxembourg, through the Law of July 31st, 1929); Macau; Maldives; Malta; Monaco; Nauru; Panama (viability for the installation of shipyards); Paraguay (tax exemption for companies that are installed there and total repatriation of profits are also allowed); Costa Rica; American Samoa; Western Samoa; San Marino; Santa Lucia; San Vicente and Grenadines; Seychelles; Switzerland (moderate levels of taxation and banking secrecy); Sultanate of Oman; Tonga; Uruguay (0.3 % tax rate for a company of financial investments); Vanuatu (also New Hebrides).

According to *Receita Federal do Brasil* (based on article 1st, items I to LXV of the Normative Instruction RFB n 1,037 of June 4th, 2010), the following countries

[17] Available at http://www.oecd.org/dataoecd/38/14/42497950.pdf. Access on September 8th, 2014.
[18] According to KRONBERG, *op. cit.*, p. 172-173.
[19] http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/addressing-base-erosion-and-profit-shifting_9789264192744-en access on Septemer 5th, 2014.

should be considered tax havens of a damaging regime: Andorra, Anguilla, Antigua and Barbuda, Netherlands' Antilles, Aruba, Ascension Islands, the Bahamas, Bahrain, Barbados, Belize, Bermuda, Brunei, Campione D'Italia, Canal Islands (Alderney, Guernsey, Jersey and Sark), Cayman Islands, Cyprus, Singapore, Cook Islands, Costa Rica, Djibouti, Dominica, United Arab Emirates, Gibraltar, Granada, Hong Kong, Kiribati, Lebuan, Lebanon, Liberia, Liechtenstein, Macau, Madeira, Maldives, Isle of Man, Marshall Islands, Mauritius, Monaco, Montserrat Islands, Nauru, Niue, Norfolk Island, Panama, Pitcairn Island, French Polynesia, Qeshm Island, American Samoa, Western Samoa, San Marino, Santa Helena Islands, Santa Lucia, St. Kitts and Nevis, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Swaziland, Switzerland,[20] Sultanate of Oman Tonga, Tristan da Cunha, Turks and Caicos, Vanuatu, American Virgin Islands and British Virgin Islands.

The global scenario has gone through significant changes that result from a variety of phenomena which, among other aspects, characterize the exponential multiplication of the number of international economic transactions, especially in the areas of services, capital and information transference, improvement and cost reduction of the tools and logistic processes, as well as the increase of tax competition between countries, especially with the aim to attract capital and external investment.[21]

Precisely in relation to this latter issue, the tax practice aimed at the international demands allow for state policies to perform an important role concerning competition for private capital.

In such circumstances, the creation of exemptions and incentives of the most varied nature to foreign investors in order to attract and retain goods and capital, in an attempt to increase the potential of income generation and job vacancies and, above all, of social and economic development, has crystallized a competitive process of tax competition that is coherent with the globalization of markets. In terms of taxation, and based on the policies adopted by the country that receives the investment, it is noticed that such a treatment acquires a double aspect, which José María Vallejo Chamorro classified as healthy tax competition and damaging tax competition.[22]

While the former one aims at eliminating inefficiencies and increasing neutrality of the tax systems, the latter tends to use the tax system with a comparative advantage of the tax privileges that are not reasonable in order to attract capital.

From this point of view, it is appropriate to highlight that tax havens (the countries or jurisdictions where the tax policies are mentioned above) are recurrently taken as strongholds of illicit aims such as money washing. In fact, the distinction

---

[20] The effects of including Switzerland in the list of tax haven countries were neutralized with the Executive Declaratory Act RFB n. 11, of June 24th, taking into account the revision request made by the Swiss government.

[21] See THORTENSEN, Vera. A OMC – Organização Mundial do Comércio e as negociações sobre investimentos e concorrência. **Revista Brasileira de Política Internacional**, Brasília, 1998, ano 41, nº 1, p. 58-59. Also CAPARROZ, Roberto. Comércio Internacional, SP: Saraiva, 2012, p. 43 e 44.

[22] According to CHAMORRO, José María Vallejo. *La competencia fiscal perniciosa en el seno de la OCDE y la Unión Europea.* ***Nuevas Tendencias en Economía y Fiscalidad Internacional - Revista ICE***, Madri, set./out. 2005, nº 825, p. 147-160.

designed by Chamorrro comes exactly to inhibit such a notion, once only tax havens of a damaging competition regime must be considered so.

Therefore, if by one aspect the damaging tax competition appears to be relevant – if not the most relevant one – contributing to the economic development of certain States or jurisdictions, on the other hand its existence culminates with the most varied problems concerning those other countries, which by not offering rather substantial incentives, can see their levels of internal investment and generation of work positions decrease substantially, as well as their income potential, when compared to the so-called tax haven countries.

3. Flags of Convenience

The United Nations Convention on the Law of the Sea (UNCLS III) in its article 91.1 states that:

> 1 – Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must be a genuine link between the State and the ship.
>
> 2 – Every State shall issue to ships to which it has granted the right to fly it flag documents to that effect.

In other words, there must be a deep connection between the country and the ship that flies the flag. Eliane Octaviano Martins[23] sustains that the UNCLS I, the conference of Geneve of 1958, established in its article 5 the need of an authentic, genuine or effective relation between the ship and the State of register, but that relation never got really into effectiveness, so what prevailed was the principle through which the conditions and pre-requisites of concession of a flag must be invariably established by the country of register, and more

> *The State of the flag must exercise its jurisdiction in conformity with its internal right over every ship that flies its flag and over the chief in command, the officials and the crew as a whole, concerning administrative, technical and social matters that are related to the ship. Therefore, the concept of an authentic relation becomes imprecise due to the lack of a formula accepted by the international community.*

Eliane O. Martins[24] sustains that there are several criteria used by the legislations of the States to determine the nationality of the ship, which are: the ship-building criterion (USA); the property criterion (Germany, England, Argentina,

[23] MARTINS, Eliane M. Octaviano, Curso de Direito Marítimo, vol.1, 3a.ed. São Paulo: Manoli, 208, p.170.
[24] Op.Cit., p.170,171

Portugal); the composition of the equipment criterion (Chile, Romania); and, finally, the mixed system criterion (Brazil, France), where the concession of a flag must fill a series of requirements.

One of the presuppositions of existence of Public International Law is the plurality of Sovereign States, that is, States are free to legislate as they find it appropriate. A *ius cogens* of an international norm that obliges a Sovereign State to proceed in relation to an administrative issue such as the registration of a ship would not be admissible. Bearing that in mind, the existence of flags of convenience is possible.

The flags of convenience, together with the second registrations, which are not the object of analysis in this article, form the so-called open regimes, though they do not fill up to their name, that is, convenience. Using a country's flag, instead of the flag of the ship owner, may bring several advantages.

During the Second World War, for instance, before the year 1942, that was used by the American ship owners to go around the government prohibition on the export of goods to the countries that were in war against each other. The ship owners used the flag of Panama.

On one hand, for having flexible labor and tax laws and for charging specific and fixed amounts, the countries that "lend" their flags can get an income that they wouldn't actually get in any other circumstances.

On the other hand, the ship owners can have a plus in their earnings, as in terms of a final freighting price, the amount charged on taxes added to social charges is quite substantial. The ship owner earns by paying lower taxes and also earns by hiring equipment operators who are not members of a union, at much lower values, or as Eliana O. Martins[25] would state it, in…

> *…the globalized scenario, navigation companies proceed to the strategy of adopting a flag of convenience, motivated by facilities of registration procedures, tax incentives, cutting down of labor costs and the inexistence of impositions as to the liaison between the State where the registration is made and the ship itself. Consequently, there is lower incidence of right-cost in the sea freighting.*

Carla Adriana Comitre Gibertoni[26] defines Flags of Convenience as "the concession of some States of their nationality to some foreign ships. They are ships that, by being owned by people that inhabit a country, are registered in another country due to the benefits gained with the legislation of such countries".

The International Transport Workers' Federation (ITF)[27] defines Flag of Convenience – FOC – as the condition of a lack of liaison between the ship owner and the ship flag, that is, when the beneficiary ownership and control of the ship are located in a country or countries other than that of the flag the ship belongs to.

---

[25] Op.Cit.,p.173-74.

[26] GIBERTONI, Carla A.C., Teoria e Prática do Direito Marítimo, 2ª.ed.RJ:2008,p.60.

[27] http://www.itfglobal.org/itf-americas/flags-convenience.cfm/ViewIn/POR, access on September 8th, 2014.

The main countries using the flag of convenience to date are[28]: Liberia, Panama, Honduras, Costa Rica, the Bahamas, Bermuda, Singapore, the Philippines, Malta, Antigua, Aruba, Barbados, Belize, Bolivia, Burma, Cambodia, Canary Islands, Caiman Islands, Cook Islands, Cyprus, Equatorial Guinea, International Maritime Register of Germany, Gibraltar, Lebanon, Luxemburg, Marshall Islands, Mauritius, Dutch Antilles, Saint Vincent and Grenadines, São Tomé e Príncipe, Sri Lanka, Tuvalu e Vanuatu.

In an interesting piece of work, Álvaro Sardinha[29], considering the size of the fleet of countries that use the flag of convenience, points out that…

> …almost 42% of the world fleet is registered in Panama, Liberia and the Marshall Islands. Over 92% of the demolition of ships is performed in India, China, Bangladesh and Pakistan.
>
> Basically half of the world tonnage belongs to companies from four countries only: Greece, Japan, Germany and China. The transportation of cargo in containers holds 52% of the total amount of commerce through ocean transportation.

For the other States, those that do not use the flags of convenience, the impact on the revenues from freighting is huge. Eliane O. Martins[30] sustains that…

> ...in Brazil, only 3% of the total amount collected with freighting derives from ships that hold the Brazilian flag and, generally, in cabotage navigation. It is estimated that the evasion of taxes resulting from the use of FOC was as much as 6 billion dollars in 2002. Currently, there are no Brazilian ships of a regular line (*liners)* in long course navigation.

If, on one hand, the flags of convenience reduce the costs of the ship owner, on the other hand they prevent the State from controlling them appropriately, especially as to safety procedures and the application of labor regulations and laws. That results in an increase in the number of accidents, which have been reported by the world's merchant navy involving ships with flags of convenience.

4. Handling of Cargo in Brazil and at Paranaguá Harbor

Considering Brazil, the Annual Report of Cargo Handling from *ANTAQ (Agência Nacional de Transportes Aquaviários* / The National Authority on Water

---

[28] Source: http://www.popa.com.br/docs/cronicas/bandeira-de-conveniencia.htm, access on September 7th, 2014.

[29] http://transportemaritimoglobal.files.wordpress.com/2013/09/registo-de-navios-estados-de-bandeira.pdf access on September 8th, 2014, p. 5.

[30] Op.Cit., p.177.

Transportation), of 2013, published in 2014[31], states that the total handling of cargo in the Brazilian harbors throughout the year 2013 was 931 million tons, showing a relative increase of 2.9% and an absolute increase of 26.6 million tons in relation to the year 2012.

According to CNT[32], Brazil holds a number of 155 vessels in its cabotage fleet,

> a number that is considered insufficient to serve the existing demand (therefore favoring the use of other means of transportation). As to gross tonnage, it can be observed that the total offer is 2.88 million TPB, with an average of 18.6 thousand TPB per ship. The average age observed, however, is rather high, around 16.5 years, and some vessels are as old as thirty years or above, which is the case of the tankers, barges and floating boats. That points to the need of mechanisms that allow for the renewal of the national fleet of cabotage. We should highlight, as it was presented through the research by CNT on ocean transportation in 2012 that according to the Normative Instruction from *Secretaria da Receita Federal and SRF n. 162/98,* the life span of large vessels is 20 years.

In terms of percentage[33], the long-haul navigation corresponded to 73.7% of the total number; cabotage amounted to 22%; inland navigation to 3.8%, ocean navigation support was 0.4% and harboring support was 0.2%.

The long-haul navigation was 2.3% higher than in 2012, mainly in iron ore, with 332.1 million tons; containers, 78.2 million tons; fuel 52.5 million tons; and soybeans, 43.1 million tons[34].

Considering these pieces of data, it is visible that most part of the long-haul navigation was performed using tramp ships, whose freighting and routing are negotiable, following the law of offer and demand. It is appropriate to highlight that the long-haul ships do not hold a national flag.

The annual report of the *Confederação Nacional dos Transportes sobre Cabotagem (the National Federation for Cabotage Transportation)*, of 2013[35] shows important diagnoses in relation to barriers in order to drain more rapidly the production to be exported as well as the entrance of products into the country.

> It is necessary to overcome the barriers so to increase the use of this type of model for the transportation of products within the Brazilian territory. Despite the extensive ocean coastline of

[31] http://www.antaq.gov.br/Portal/Anuarios/Anuario2013/Tabelas/AnaliseMovimentacaoPortuaria.pdf, access on September 8th, 2014, p.6

[32] http://www.cnt.org.br/Paginas/Pesquisas_Detalhes.aspx?p=9, access on September 8th, 2014, p.26.

[33] ANTAQ, p.6

[34] ANTAQ, p.9

[35] CNT, p.10.

7,400km and consequently its highly potential use, this type of navigation has its growth restrained due to several factors. The main ones are the high taxes applied to the sector (loading, unloading and storing goods), the high level of bureaucracy in the harbor operations, the high tax burden (both as to the number of taxes and to the total amount paid), lack of appropriate harboring structure (shallow canals, poor quality of access to the harbor terminals), old and decadent fleet and limited number of vessels.

This represents higher costs, as the waiting time to take any of the cradles, for instance, may contribute as an indirect stimulus to the use of flags of convenience.

In 2013, Paranaguá harbor handled 41.9 million tons, revealing a growth of 3.6% in relation to 2012; this corresponds to 4.5% of the total handling of cargo in Brazilian harbors over the year 2013.

Considering the long haul navigation, the exportations correspond to 67.8% of the total handling, and the main products are soy, soy bran, sugar, corn and containerized goods. These exportations amount to 26 million tons[36].

In Paranaguá, in the state of Paraná, the same data are repeated when considering the Brazilian situation, as most of the ships are the tramp type.

5. Final Considerations

Both the tax havens and the flags of convenience find opposition, but they are instruments that many States use with the aim of increasing their income, though only in terms of taxation, as in fact neither the former nor the latter can bring them any development.

Many of the tax havens are at the same time flags of convenience countries. However, one cannot deny that these two conditions of a country may represent a form of obtaining some earning, as many of such countries, which are usually rather small in size and have a reduced population, would not find another way to obtain any income. There is the need to consider the adoption of other compensatory mechanisms so that these countries drop such practices.

On the other hand, little by little the OECD tends to recommend mechanisms to restrain tax haven countries; however, in relation to flags of convenience there is no direct attitude against their usage. Some measures have been taken, though, concerning their environmental impact, as it is attributed to the flags of convenience ships the major accidents in the sea.

Such measures include, for instance, the Paris MoU on Port State Control – a Memorandum of Understanding – with the publication of Black lists of ships that have occasionally broken the safety rules at sea, pointing out existing deficiencies and the ship owners in charge.

[36] ANTAQ,p.16

The income deriving from freighting affects several countries, including Brazil, which loses income for not using its fleet with the national flag, mainly concerning the long-haul navigation.

This represents a problem that exceeds the severity of the so-called tax haven countries, for in Brazil there are mechanisms by the *Receita Federal* (the national tax authority) to restrain the use of tax havens. One cannot say the same in relation to flags of convenience.

6. References

ANTAQ – Agência Nacional de Transportes Aquaviários - http://www.antaq.gov.br/Portal/Anuarios/Anuario2013/Tabelas/AnaliseMovimentacaoPortuaria.pdf,

CAPARROZ, Roberto. **Comércio Internacional**. São Paulo: Saraiva, 2012.

CHAMORRO, José María Vallejo. **La competencia fiscal perniciosa en el seno de la OCDE y la Unión Europea**. **Nuevas Tendencias en Economía y Fiscalidad Internacional** - Revista ICE, Madri, set./out. 2005, nº 825

CHRISTENSEN, John. **Paraísos fiscais e corrupção – uma luta global.** Observatório da Cidadania – Instituto Brasileiro de Análises Sociais e Econômicas, Rio de Janeiro, 2007.

CNT – Confederação Nacional do Transporte - http://www.cnt.org.br/Paginas/Pesquisas_Detalhes.aspx?p=9

FARIA, José Eduardo. **O Direito na economia globalizada**. São Paulo: Malheiros, 2002.

GIBERTONI, Carla Adriana Comitre. **Teoria e Prática do Direito Marítimo**, 2ª.ed.Rio de Janeiro: Renovar, 2005.

GUERRA, Sidney. **Soberania e Globalização: o Fim do Estado-Nação?** *In*: GUERRA, Sidney; SILVA, Roberto Luiz (Coord.). **Soberania: antigos e novos paradigmas**. Rio de Janeiro: Freitas Bastos, 2004.

HARADA, Kyoshi. **Direito Financeiro e Tributário**. 17. ed. São Paulo: Atlas, 2008.

KRONBERG, Helcio. **A livre circulação de capitais no MERCOSUL**. São Paulo: Hemus, 2003.

MAGALHÃES, José Carlos de. **Direito Econômico Internacional**. Curitiba: Juruá, 2008.

MARTINS, Elaine M. Octaviano. **Curso de Direito Marítimo**, vol.I. 3ª.ed.São Paulo: Manole, 2008.

OCDE - Organização para a Cooperação e Desenvolvimento Econômicos. www.oecd.org.

POLAK, S. **Constituição de companhias *Off-Shore***. Revista Contábil & Empresarial. Disponível em: http://www.netlegis.com.br/indexRC.jsp?arquivo=/detalhesDestaques.jsp&cod=11668.
SARDINHA, ANTONIO. **Registro de Navios – Estados de Bandeira**, disponível em http://transportemaritimoglobal.files.wordpress.com/2013/09/registo-de-navios-estados-de-bandeira.pdf.

SILVA, Roberto Luiz. **Direito Econômico Internacional e Direito Tributário**. Belo Horizonte: Del Rey, 1995.

THORTENSEN, Vera. A OMC – Organização Mundial do Comércio e as negociações sobre investimentos e concorrência. **Revista Brasileira de Política Internacional**, Brasília, 1998, ano 41, nº 1.

http://contabancariaoffshore.com/Lista-de-Paraisos-Fiscais.htm .

http://melloassociates.weebly.com/paraiacuteso-fiscal.html