
The Use of Economic Instruments for Influencing Shipping in the Baltic Sea Area

Per Kågeson

Nature Associates

21 April 2005

Is km charging legally feasible?

- Is it possible to measure the emissions?
 - Is there a conflict with the right of innocent passage?
 - Would charging conflict with UNCLOS Article 26 on charges levied upon foreign ships?
 - Would km charging require amendments to the MARPOL 73/78 convention?
 - Would a decision by the EU require a unanimous vote in the Council?
-

Kilometer charging

- Allows charges to be closely linked to underlying costs
 - Allows differentiation that reflects differences between vessels
 - Takes distance into consideration
 - Is non-discriminatory
 - Is effective and cost-efficient
-

NERA on market instruments

- The following instruments are most promising:
 1. The stringent credit-based approach (voluntary)
 2. The consortia benchmarking approach (establishes a mandatory baseline)
 3. Voluntary port dues differentiation
 - There are more efficient instruments, which, however, require legal amendments
-

Draft proposal for distance-related emission charges

- Based on distance traveled in the Baltic Sea and specific emissions of SO_x and NO_x,
 - The distance counted from the latest port in the area or from the border to the North Sea
 - Collected by ports on behalf of a common authority
 - The revenue recycled in a way that does not disturb the function of the charges
 - Ships calling fewer than X times exempted
-

Conventions of potential importance

- The United Nations Convention on the Law of the Sea (UNCLOS)
 - The International Convention for the Prevention of Marine Pollution from Ships (MARPOL 73/78)
 - The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area
-

Damage to terrestrial ecosystems

- Do the conventions apply to damage to terrestrial ecosystems and human health?
 - They were initially focused on the protection of the marine environment
 - IMO, however, has stretched its mandate by allowing MARPOL to include effects on terrestrial ecosystems and human health in Annex VI and by adopting a resolution on greenhouse gas emissions from shipping
-

Methods for measuring emissions

- MARPOL's Annex VI includes a mandatory NOx technical Code
 - Sweden has since 1998 registered the specific emissions of NOx and the sulphur content of bunker oils in ships asking for reduced fairway dues
 - The Automatic Identification System (AIS) can be used for registering the distance traveled
-

The right of innocent passage

- UNCLOS Art. 19 guarantees the right of innocent passage
 - The proposed scheme would make clear that charging does only apply to ships calling at ports of participating States
 - Charges connected to such calls would not necessarily imply a violation of Art. 19
-

UNCLOS Article 26

- Article 26 says that charges on ships for their passage through the territorial sea may only be levied as payment for specific services rendered to the ship.
 - Recycling the revenue means that the average fee/rebate is zero
 - Some ships would pay more, other less
 - This is also in the case of the current differentiation of Sweden's fairway dues
-

Would km charging require amendments to UNCLOS?

- Article 211:6(a) allows States to adopt special mandatory measures for the prevention of pollution from ships in the economic zone. Consultations through IMO are required.
 - Article 212:2 on says that States shall take other measures (than those enforced by international agreement) to prevent air pollution as may be necessary. It does not require consultations.
-

Who would object?

- No conflict with the right of innocent passage
 - Non-participating States would complain
 - Ships registered in participating States would hardly complain
 - Only high-emitting frequent visitors from other flag states have reason to complain
 - However, no flag state have cared to complain about the current differentiation of Sweden's port and fairway dues
-

Is a unanimous EU vote required?

- Decisions on tax rates require a unanimous decision by the European Council
 - Km charges are not taxes – no common decision on rates is required and the revenue would, anyway, be recycled
 - The scheme does not necessarily require an EU decision at all
 - The States concerned can form an alliance based on the principle of subsidiarity
-

A legal framework

- The scheme could potentially be administered by:
 1. HELCOM (would require the participation of all coastal states)
 2. The European Maritime Safety Agency (would require amendments to the directive)
 3. A new Baltic Sea Inspectorate or Baltic Sea Monitoring Centre
-

Additional tasks for the authority

- Use km charging for making ships pay for port-based facilities that take care of sludge and oily water – paying ports for what they actually receive and control that all ships leave such waste in port
 - Using the AIS system for around the clock control of potentially illegal operations by fishing vessels
 - Coordinate rescue operations
-

Future work

- Additional quality control of the analysis of the legal aspects
 - An in-depth analysis of the size of the charges and the best way of recycling the revenue
 - Looking more closely at the idea of creating a multi-task inspectorate or centre for the Baltic Sea
-

Conclusions

- Km charging has important advantages over most other market based instruments
 - There are no insurmountable legal obstacles to the introduction of environmentally differentiated km charges in the Baltic Sea as long as the fees are collected in participating ports and the revenue is recycled in a neutral way
-