INTERNATIONAL SHIP-OWNERS ALLIANCE OF CANADA

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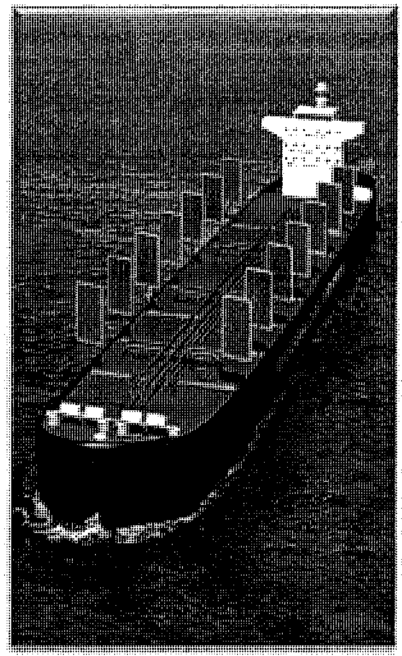
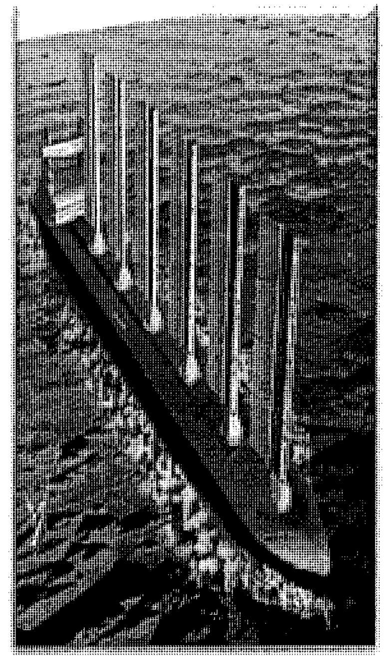
Legal Aspects of Market Based Measures: Is the correct entity being regulated?

Kaity Arsoniadis-Stein LLB, LLM

President & Secretary-General





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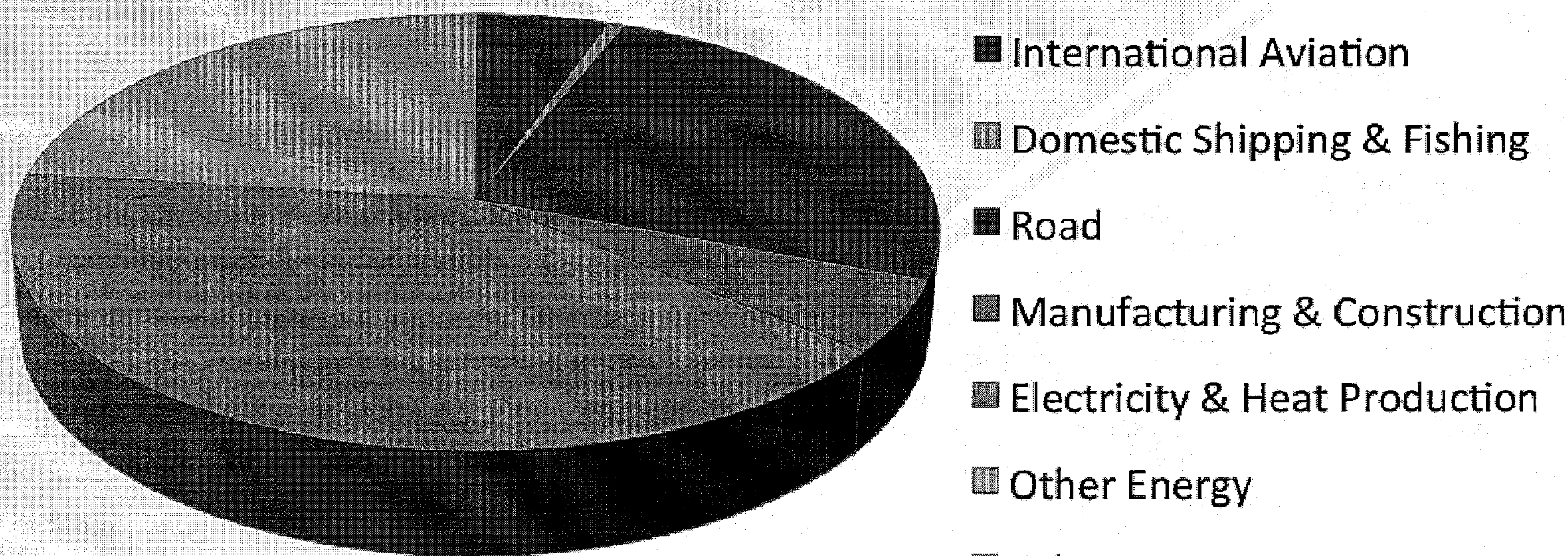
Enhancing Canada's Marine Industry

Introduction

GHG Emissions from International Shipping:
2.7% of global emissions/ 870 million tonnes



Source: Second IMO GHG study 2009, Copenhagen, Denmark

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IMO & GHG Emissions

IMO addresses GHGs through:

- First ever mandatory GHG reduction measures
  - EEDI and SEEMP
- Market-Based Measures

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EEDI and SEEMP

New builds
Technical

EEDI
Energy Efficiency
Design Index

Years: 2015-2019
Ships required to be
10% more efficient

Years: 2019-2024
30% more efficient

Existing
Operational

SEEMP
Ship Energy
Efficiency Plan

Existing ship will be
required to have in
place a SEEMP

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Market- Based Measures(MBMs)

At **MEPC 59** it was recognized that operational and technical measures were not sufficient for the reduction of GHGs in the shipping industry and furthermore the idea of MBMs was introduced.

MBMs are intended to :

- ✓ place a price on GHGs
- ✓ Provide fiscal incentives for further emission reductions, and/ or
- ✓ Offset the growing concerns of ship emissions

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Various Proposals submitted to the IMO

Main Proposals

1. Greenhouse Gas Fund
Denmark, Cyprus, Marshal Islands, Nigeria & IPTA

2. Emissions Trading Scheme
Norway, UK, France, Germany

Other Proposals:

1.Efficiency Incentive Scheme Japan & WSC

2.Ship Efficiency Credit Trading
US

3.Bahamas proposal

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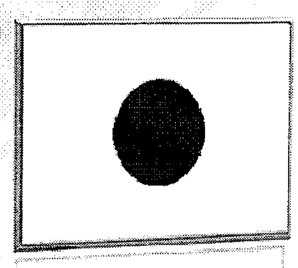
Efficiency Incentive Scheme- Japan & WSC

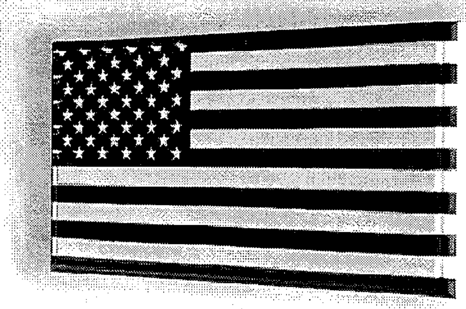
- Mandatory efficiency standards based on EEDI
- Fee for vessels below efficiency standards
- Promotes higher level of efficiency in the industry
- Administration: International GHG Fund
- Revenue allocation: in-sector R&D and funding of other projects as set forth by the Parties



Ship Efficiency and Credit Trading- US

± Efficiency Credit(EC)= $(EI_R - EI_A)$ x Activity

- Mandatory energy efficiency standards
- No emissions emission cap & no fuel surcharge
- Efficient ships earn credits
- In-sector technology efficiency improvements



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Bahamas

- Proposes a GHG reduction through technical and operational means
- Funds raised: proportionate to the level of shipping emissions

Shipping Industry
2.7% of global emissions

→

UNFCCC Fund
Shipping pays only 2.7% of the total fund
ie. $2.7bl instead of $100bl

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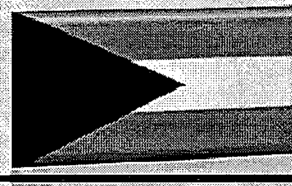
Bahamas



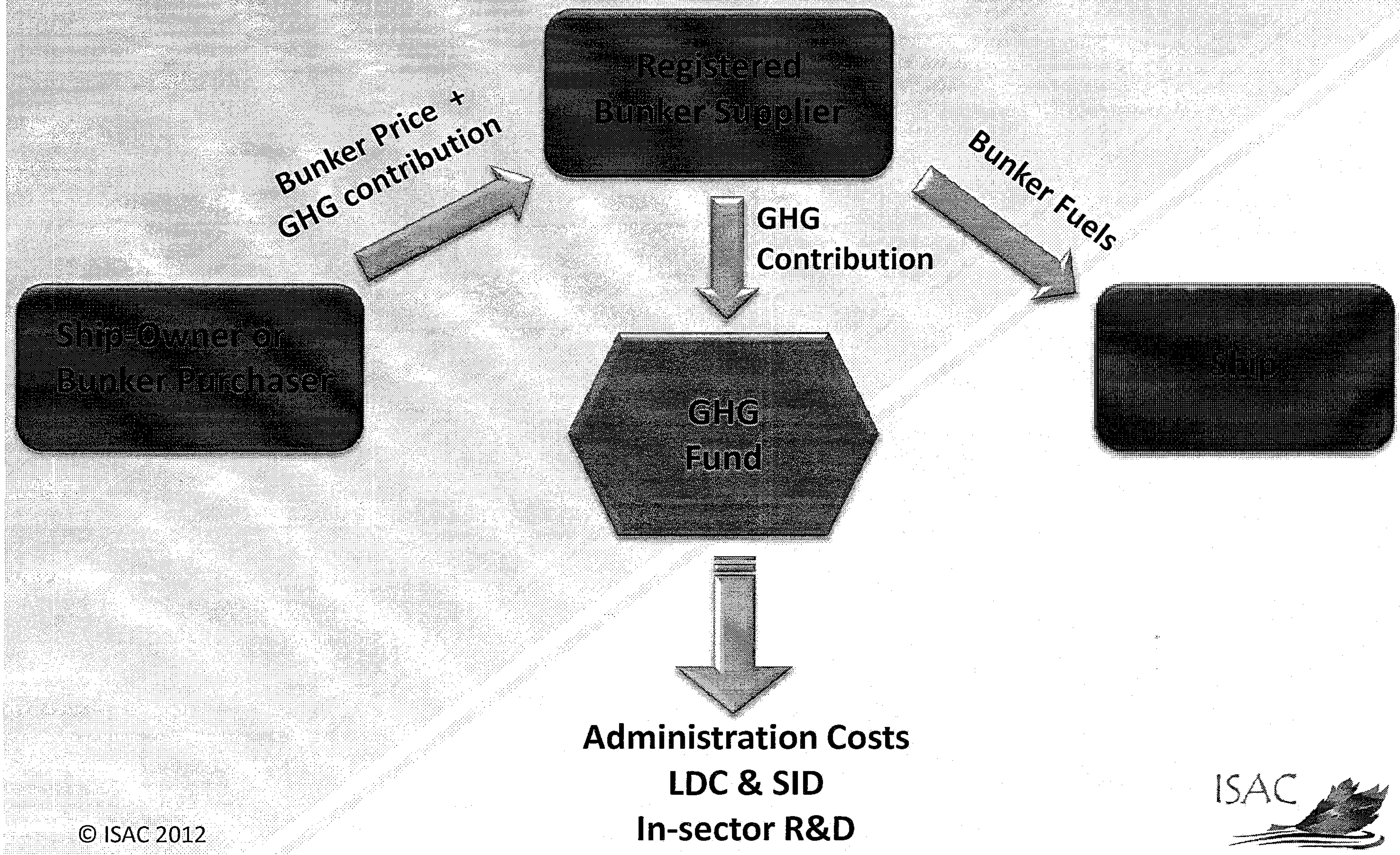
Bahamas proposal however has been criticized for being “superficially attractive”.

- Consequences of exceeding a ships’ CO2 “allowance”

“As well as being highly damaging to large parts of the industry, the Bahamas’ proposal would alter the level playing f[illegible]d distort competition.”

Spyros Polemis
Chairman, ICS

GHG Fund- Cyprus, Denmark, Marshal Islands, Nigeria & IPTA



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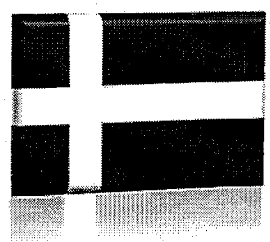
GHG Fund- Cyprus, Denmark, Marshal Islands, Nigeria & IPTA

- IMO or UNFCC: Global reduction target for emissions
- Inclusion of every vessel that trades Internationally
- GHG Contribution: through a surcharge on bunkers
- Emissions above target line are offset
- GHG Fund Administrator: Collection & Allocation of contributions
- Allocation of revenues: R&D, Technical Cooperation with IMO



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GHG Fund- The issue of Hypothecation

- The issue of hypothecation is an obstacle for many States;
- UK Government has the policy of <u>not</u> hypothecating tax revenues;
- UK considers it inappropriate for global legislation to determine national public expenditure allocation.

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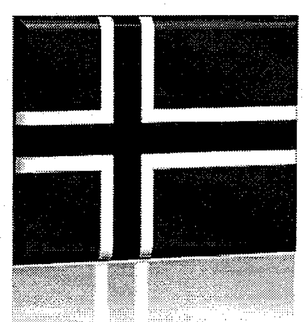
Emission Trading System- Norway, UK, France

- Sector-wide cap on net emissions
- ETS Registry: ships register and obtain emission allowances
- Emission allowances based on the vessels CO_2 emissions
- Emission Allowances sold by an international entity
- Establishment of a Fund
- Distribution of the Fund revenues to developing countries



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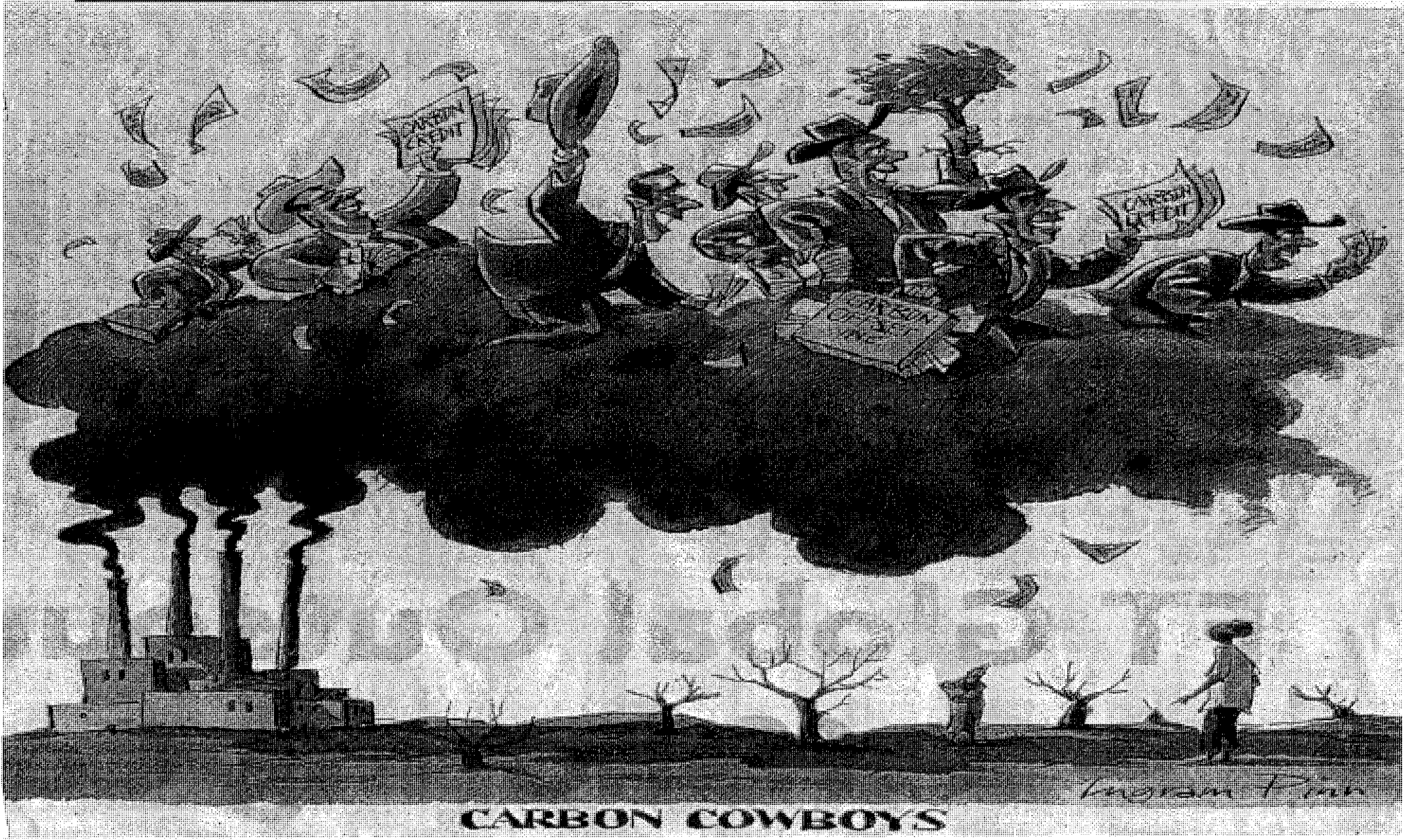
Emission Trading System- Norway, UK, France



Source: Financial Times (Letters section), April 28, 2007.

EU Emission Trading System- International Law

Article 92(1) of UNCLOS:

"Ships shall sail under the flag of one State only and [...], shall be subject to its exclusive jurisdiction on the high seas [...]."

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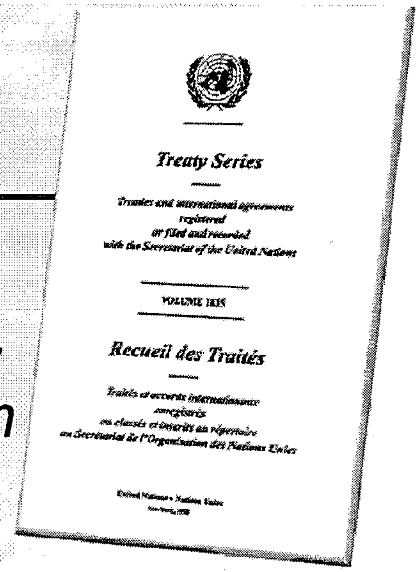
UNCLOS



Article 92(1)

"Ships shall sail under the flag of one State only and... shall be subject to its exclusive jurisdiction on the high seas [...]."

Article 227

"In exercising their rights and performing their duties under this Part, States shall not discriminate in form or in fact against vessels of any other State."

Article 228

Flag States have the right *"[...]to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State."*

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UNCLOS

Article 26

"No charge may be levied upon foreign ships by reason only of their passage through territorial sea...charges may be levied...as payment only for specific services rendered to the ship."

Article 24(1)

"The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea [...] impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State."

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EU Emission Trading System- International Law

"Not only does the taxpayer carry the cost of any cap and trade system, but their money also provides profits for a whole new industry: the new (unregulated) carbon trading sector, the middlemen who make the system work and a whole pile of money".

Martin Livermore, the Wall Street Journal

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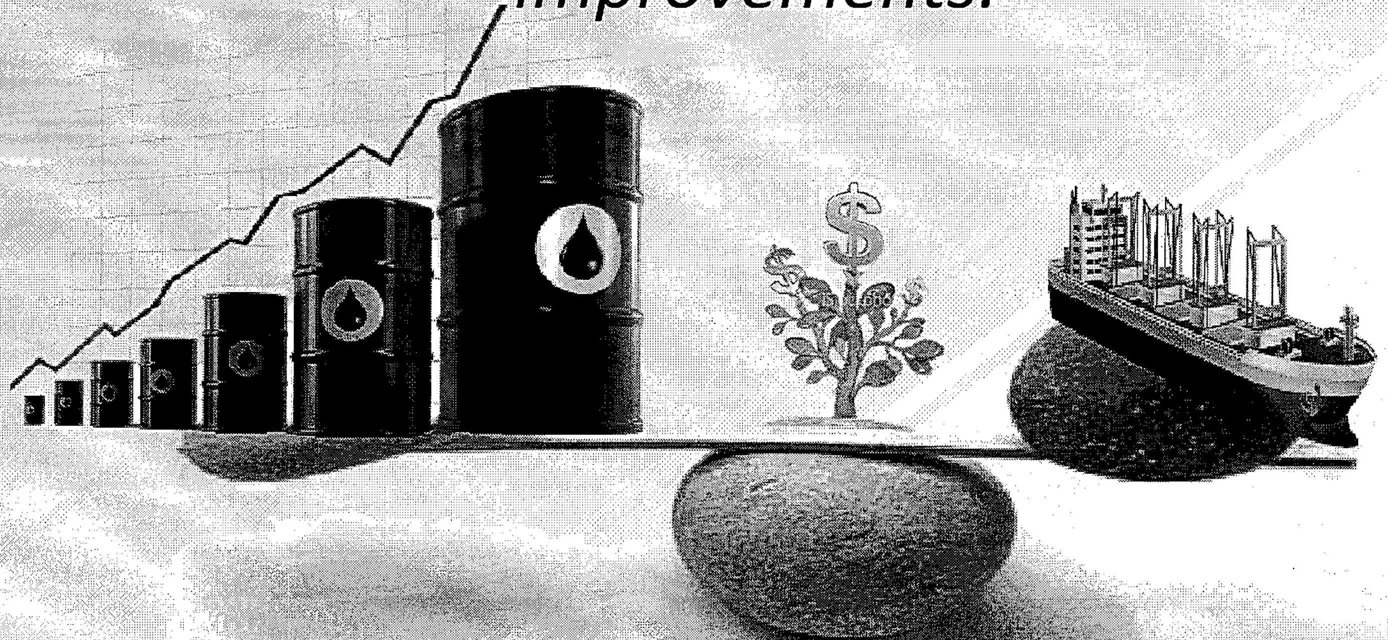
MBMs: Regulating the shipping industry

The marketplace will drive environmental improvements.



Reducing fuel consumption is the most profitable initiative a ship-owner can take.

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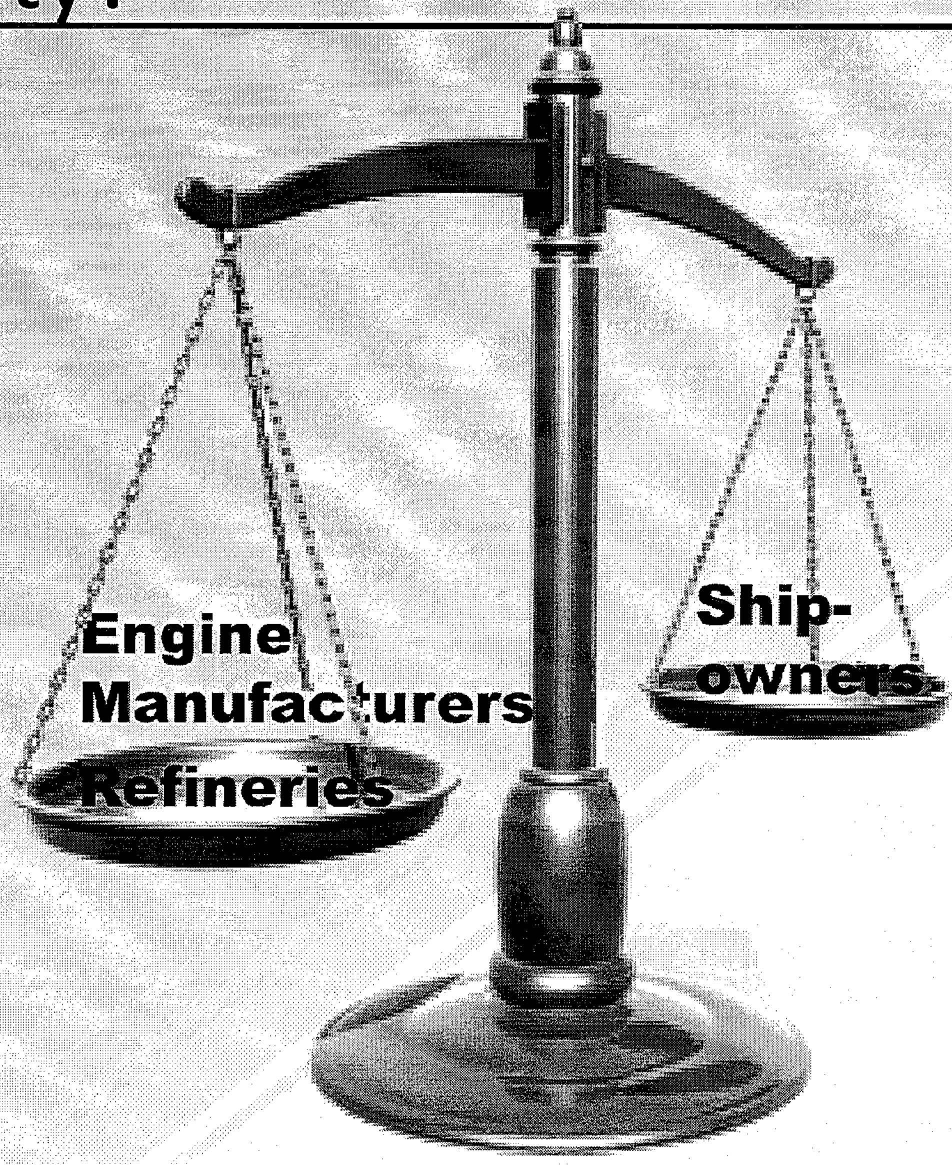
Are Regulations aimed at the correct Entity?



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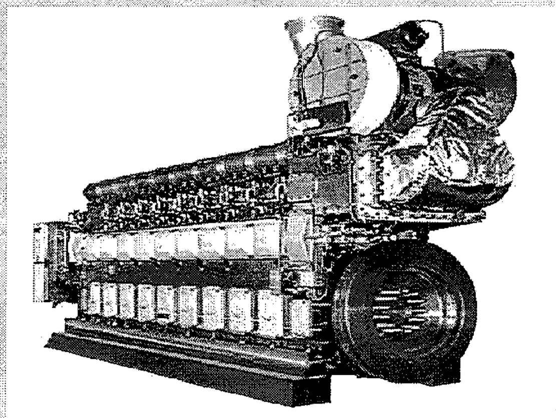
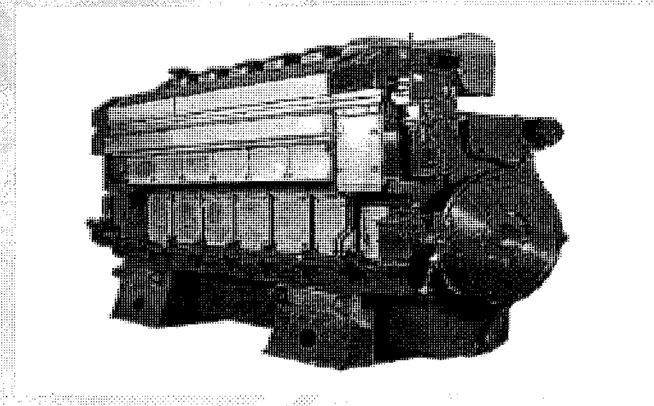
Engine Manufacturers

Ship Engines



1978: Vasa 32 engine



2010: Wartsila 32

"Existing ships were developed to operate in a world where ships' bunkers were available at US$150 a tonne. Bunker oil is now in the US$700-800 range. So, the economics of ship operations have changed."

Tom Boardley, Marine Director, Lloyd's Register

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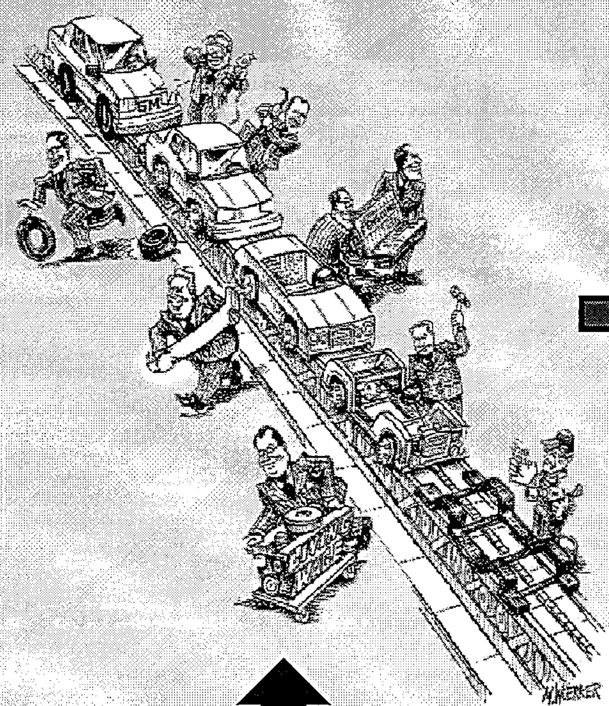
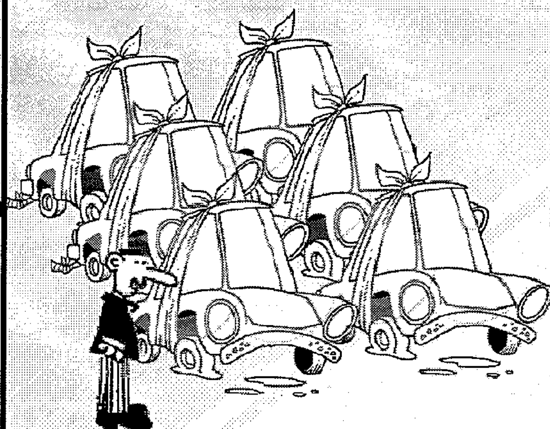
Automobile Industry: Proactive regulations

Car Manufacturer



Car Seller



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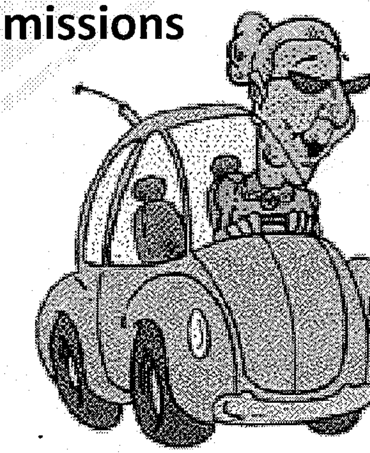
Consumer

Low CO_2 emissions



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REGULATTIONS TOWARDS CAR MANUFACTURERS

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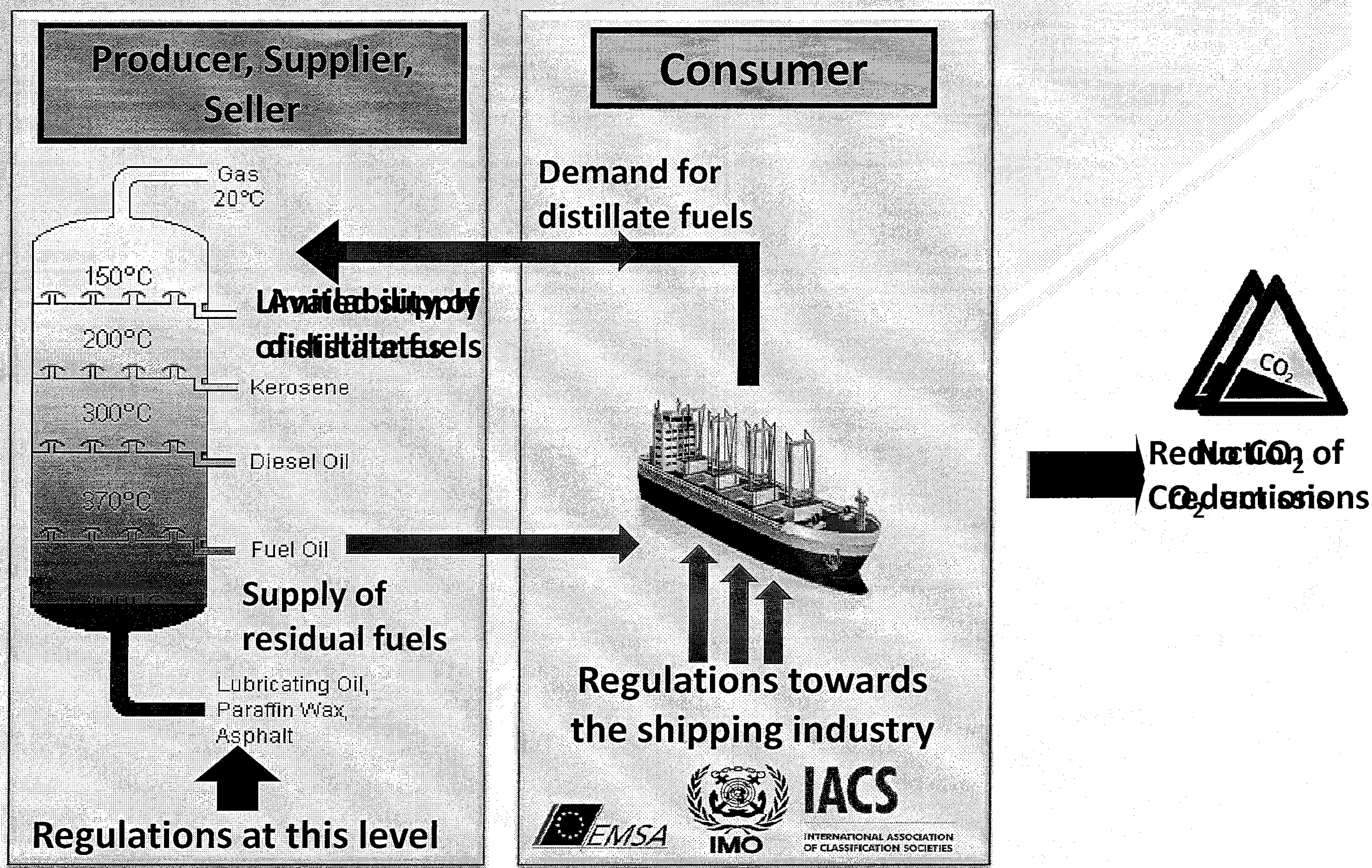
Similar Example: Oil Refineries



The marketplace will drive environmental improvements

"If you have ten thousand regulations you destroy all respect for the law."

Winston S. Churchill

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Thank you

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