



ASIAN MARITIME LAW ---- CHINA

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I. Court structures in China ---Maritime Courts

Supreme Court (Beijing)



Provincial Higher Courts (10)



Guangzhou, Dalian, Shanghai, Qingdao, Tianjing(1984)

Wuhan(1984), Ningbo(1992), Xiamen,(1990)

Beihai(1999), Haikou(1990)

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II. Overview of Maritime Law & Policy of the PRC

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The Maritime Code and The Special Maritime Procedure Law in China (1)

1. PRC Maritime Code, 1993.7.1

relevant international conventions

- Collision--1910 Collision Convention
- Marine salvage--1989 Salvage C~
- Marine claim--1976 Convention
- Carriage of Goods by Sea--Hague-Visby
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The Maritime Code and The Special Maritime Procedure Law in China (2)

2. PRC Maritime Procedure Law, July 1, 2000

- 12 Chapters with 127 Articles covering :
- Jurisdiction;
- Preservation of maritime claims;
- Maritime injunctions;
- Preservation of evidences;
- Maritime security etc.

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The Main Applicable Laws Governing the Maritime Cases in China

3. PRC Civil Procedure Law, Apr.1, 2008,
4. PRC General Principles of the Civil Law, Jan.1,1987
5. PRC Contract Law, Oct.1,1999
6. PRC Arbitration Law, Sept.1,1995
7. PRC Guaranty Law, Oct.1,1995
8. PRC Insurance Law Oct.1,2009
9. PRC Tort Liability Law July 1, 2010

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Transplanting of International Conventions--- Pros and Cons(1)

- The Pros and Cons of the Transplanting of International Conventions to PRC Maritime Law
- Remedy defects and rectify errors
- Supreme Court directions, interpretations and regulations
- Recent developments

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Transplanting of International Conventions--- Pros and Cons(2)

Supreme Court Interpretation

- The PRC Supreme Court's Interpretation on Certain Issues relating to the application of the Special Maritime Procedure Law (98 Art.; Feb.1,2003)
- Supreme Court Interpretation of the applicable laws to the personal injury cases (36 Art. May.1,2004)

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Transplanting of International Conventions--- Pros and Cons(3)

Supreme Court Regulations:

- Regulations relating to damage claims in Trials of ship collision cases (17 Articles; Aug.18,1995)
- Proposed Regulations relating to Trials of damage claim for personal injury at sea with Foreign elements (10 Art; July 1,1992,) (RMB 800,000 cap)
- Regulations relating to Trials of Marine Insurance Disputes (17 Art.; Jan.1,2007)
- Regulations on Trials of Ship collision cases (11Art. May.23,2008)
- Regulations on Trials of Applicable laws to cases of Releasing Cargo without Presenting Original B/L (15 Art Mar.5,2009)

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Recent Development

- More regulations/interpretations on the way
(Limitation of Liability, Oil Pollution.....)
- The suggestion of the amendment of the Maritime Code

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Jurisdiction Issue(1)

- Jurisdiction clause in the B/L
- Arbitration clause in the C/P
- C/P arbitration clause to be incorporated into the B/L
- Agreement on election of forum

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Jurisdiction Issue(2)

China court's attitude

- A procedural issue
- Validity——subject to the law of the forum
- a Jurisdiction clause in a B/L

Can not bind the shipper, carrier/actual carrier
a B/L holder is not bound by an C/P arbi. clause
if the cause of action is in tort, both parties shall not be
bound by the jurisdiction clause in the B/L

Challenging jurisdiction as a tactic way to win more
time—less costs and more effective, but should be
cautious.

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III. Maritime Arbitration in China (1)

- The PRC Arbitration Law
- China Maritime Arbitration Commission
Arbitration Rules (CMAC RULES)

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III. Maritime Arbitration in China (2)

- A) Arbitrators, elected or selected
 - LMAA Arbitrator
 - P.R.China: CMAC Arbitrators

- B) Costs, foreseeable or not
 - LMAA:
 - CMAC: Fee Schedule; The Payment of Arbitration Fee

- C) Arbitration, Where to go

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III. Maritime Arbitration in China (3)

A) CMAC Arbitrators

Currently 244 CMAC Maritime Arbitrators

- 197 Arbitrators from mainland
- 47 Foreign Arbitrators from 14 countries and HK and Macao

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III. Maritime Arbitration in China (4)

Comparing: LMAA Arbitrators

Currently 35 full members on list (full time maritime arbitrators).

- Professional Qualifications;
- Practical Experience;
- Training to act as arbitrators in maritime cases
- Five categories: full members; supporting members; honorary members; former members of the Judiciary; retired members

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III. Maritime Arbitration in China (5)

B) CMAC Arbitration Fee:

Fee Schedule

1. Registration Fee
2. Handling Fee
3. Explanations & Comments

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Registration Fee



<u>Amount of Claim</u> <u>(RMB)</u>	<u>Amount of Registration Fee</u> <u>(RMB)</u>
□1,000 or less	□100
□1,000-□50,000	□100 plus 5% of the excess over □1,000
□50,000-□100,000	□2,550 plus 4% of the excess over □50,000
□100,000-□200,000	□4,550 plus 3 % of the excess over □100,000
□200,000-□500,000	□7,550 plus 2% of the excess over □200,000
□500,000-□1,000,000	□13,550 plus 1% of the excess over □500,000
□1,000,000 or more	□18,550 plus 0.3% of the amount above □1,000,000

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Handling Fee



<u>Amount of Claim (RMB)</u>	<u>Amount of Handling Fee (RMB)</u>
□ 200,000 or less	□ 5,000
□ 200,000-□ 500,000	□ 5,000 plus 2% of the excess over □ 200,000
□ 500,000-□ 1,000,000	□ 11,000 plus 1% of the excess over □ 500,000
□ 1,000,000-□ 5,000,000	□ 16,000 plus 0.4 % of the excess over □ 1,000,000
□ 5,000,000-□ 10,000,000	□ 32,000 plus 0.3 % of the excess over □ 5,000,000
□ 10,000,000-□ 20,000,000	□ 47,000 plus 0.25% of the excess over □ 10,000,000
□ 20,000,000-□ 40,000,000	□ 72,000 plus 0.2% of the amount above □ 20,000,000
□ 40,000,000 or more	□ 112,000 plus 0.1% of the amount above □ 40,000,000

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III. Maritime Arbitration in China (6)



Costs: Explanations & Comments

- What is the registration fee collected for ?
- Who determine when in extraordinary circumstance?
- Equivalent foreign currency ;
- Extra or actual expenses collected;
- Article 85 of CMAC Rules

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III. Maritime Arbitration in China (7)

- The Secretariat's Responsibilities under CMAC Rules: Article 15, (Rules, Procedures, Tribunals, Place confirmed)
- The Arbitrator's responsibility

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Article 15 of CMAC Rules

“Where after receipt of the Application for Arbitration and its attachments, the Secretariat of the Arbitration Commission, finds upon examination, that the Claimant has not completed the formalities required for arbitration, the Secretariat shall request the Claimant to complete them, and when the Secretariat finds that the Claimant has completed the formalities, the Secretariat shall immediately send to the Respondent a Notice of Arbitration together with one copy each of the Claimant's Application for Arbitration and its attachments as well as the Arbitration Rules, the Panel of Arbitrators and the Arbitration Fee Schedule of the Arbitration Commission, and shall simultaneously send to the Claimant one copy each of the Notice of Arbitration, the Arbitration Rules, the Panel of Arbitrators and Arbitration Fee Schedule.

The Secretariat of the Arbitration Commission, when sending the Notice of Arbitration to the Claimant and Respondent, shall appoint one of its staff-members to take charge of procedural administration of the case.”

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III. Maritime Arbitration in China (8)

C) Arbitration, where to go?

Advantage of Beijing;

Choice of Arbitrator—Free to choose;

Expertise and professional;

Finality-final award and legally binding;

Speedy, less costly ;

Enforceability in foreign courts

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IV. Key Regulations and Procedures of the Customs for Foreign Vessels

- PRC Customs Code;
- Measures for the Inspection of Ships of International Voyage Entering or Leaving the Ports of China;
- Procedures of Customs of PRC for Control of Entry-exit International Navigating Vessels and Goods and Articles On Board;
- The Management Method for the Shipping Bills of the Inbound and Outbound Carriers by the Customs of PRC;
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V. Supervision of international vessels, inspection and control of foreign vessels

Varies International Regulations

Ship Safety Inspection Rules of the People's
Republic of China –

Come in to force on Mar. 1, 2010

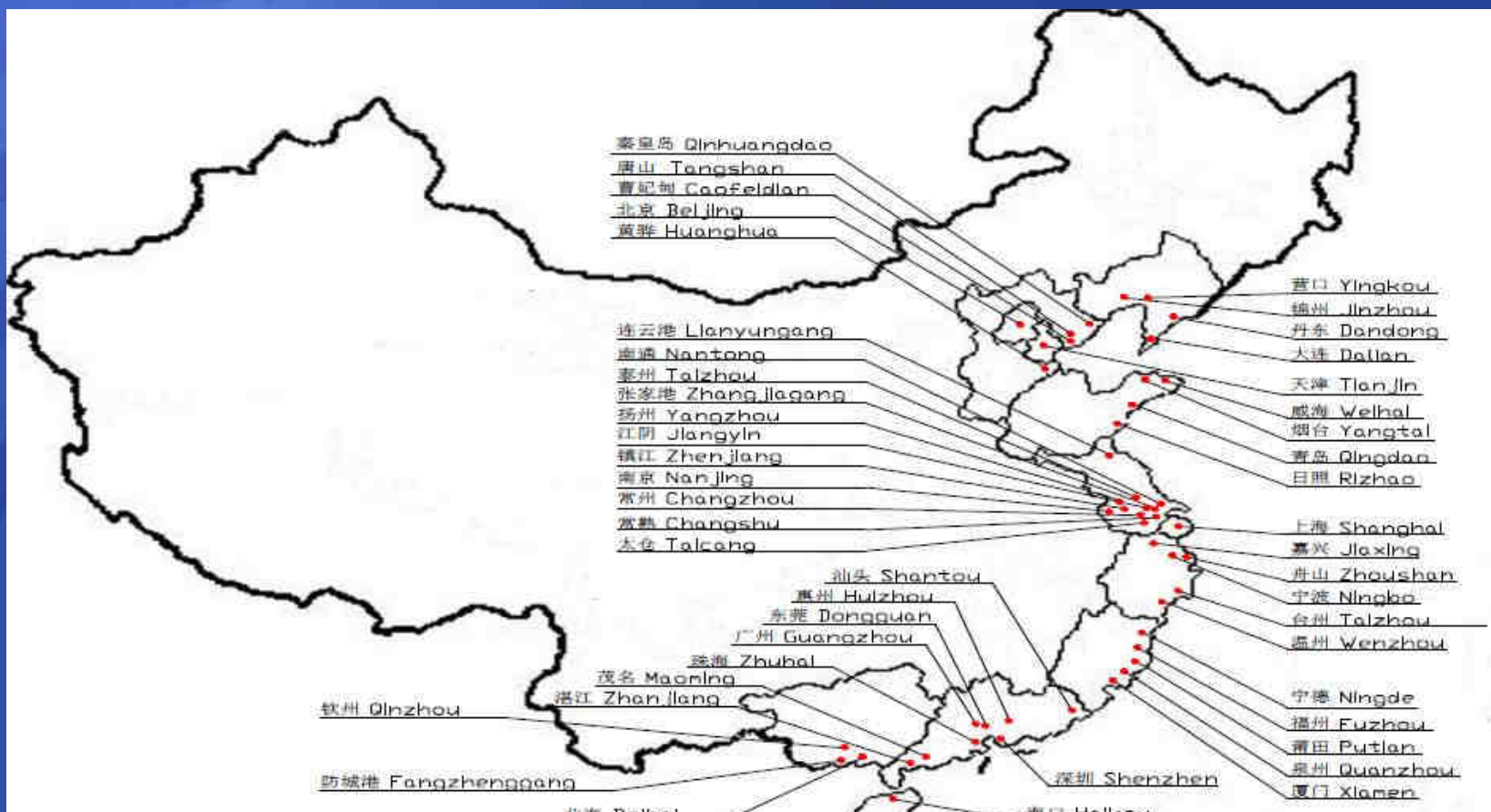
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V. Supervision of international vessels, inspection and control of foreign vessels

Authorized ports in Mainland China to enforce PSC





V. PSC in China

Vessels checked from year 1999 to 2008





V. PSC in China

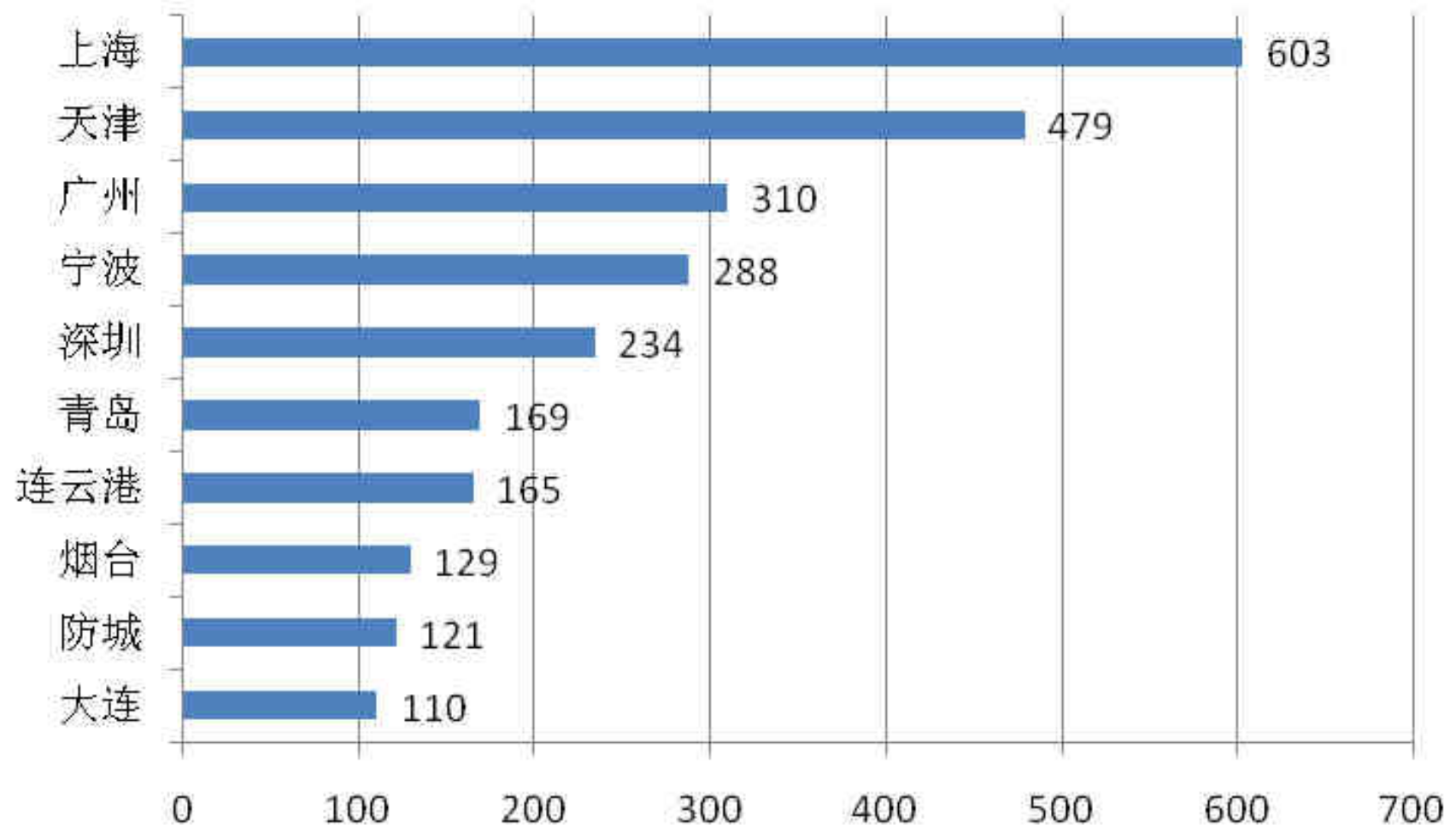
Vessels detained rate from year 1999 to 2008





V. PSC in China

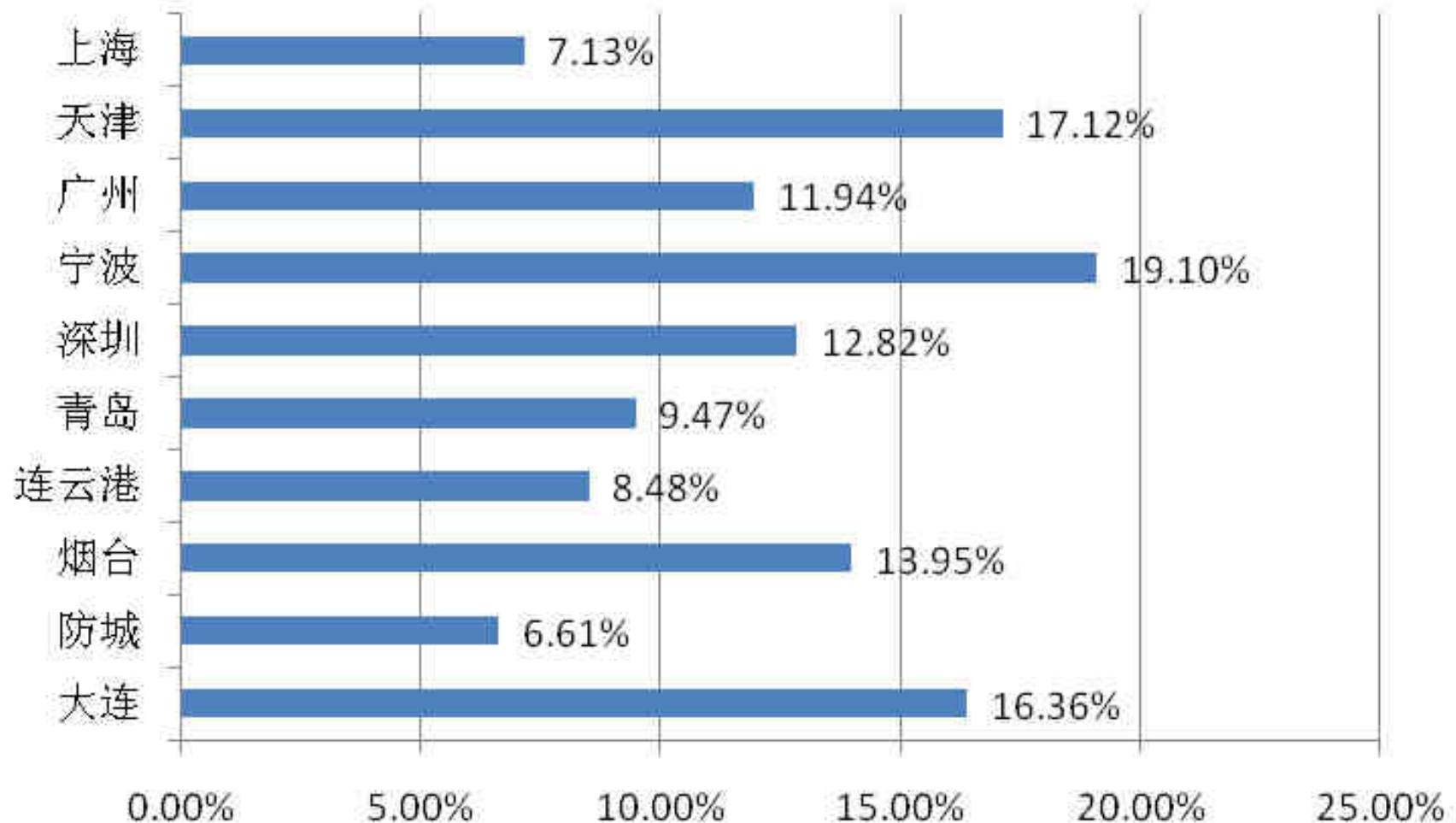
Vessels checked, top ten ports in China (y2008)





V. PSC in China

Vessels detained rates, top ten ports in China (y2008)





VI. Regulation for taxation on the transportation income of foreign fleets

- Procedures concerning Taxation on the Transportation Revenue of Vessels of Foreign Companies ([1996]87)
- Circular of the State Administration of Taxation (SAT) and the State Administration of Foreign Exchange (SAFE) on Strengthening Administration of Tax Collection on Shipping Income of Foreign Companies and Administration of External Payments in the International Ocean Shipping Industry ([2001]139)
- tax reduction or exemption treatment according to the treaties on avoiding double tax collection

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Thank you !

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