

## Featured *MSP Perspective*:



### **MSP Perspectives:**

Freedom of Navigation in the South China Sea  
— p. 4

### **Naval Development and Policy:**

Beijing confirms military support facilities in Djibouti  
— p. 5

### **Maritime Safety and Security:**

Asean countries agree to set up hotline to deal with  
maritime issues in the region  
— p. 7

### **Shipping, Ports, and the Maritime Economy:**

Singapore interested in development of Arctic Shipping  
Routes  
— p. 9

# Table of Contents

<b>MSP PERSPECTIVES</b>	<b>4</b>
Freedom of Navigation in the South China Sea	4
<b>NAVAL DEVELOPMENT AND POLICY</b>	<b>5</b>
Beijing confirms military support facilities in Djibouti	5
U.S. Navy plans two or more patrols in South China Sea per quarter	5
China's naval hospital ship calls at U.S. port	5
Chinese sub tracked U.S. aircraft carrier off Japan	5
Japan, China agree to maritime communication mechanism to prevent conflict	5
Indonesia deploys seven warships to Natuna	6
Two Australian warships move to Java Sea to participate in exercise	6
Defense Ministry: Chinese Navy gathered intelligence near Senkaku Islands	6
U.S. bombers flew near China-built islands in South China Sea: Pentagon	6
Abe hints at ops in S. China Sea	6
Malaysia to allow PLA navy use of strategic port	6
UPDATE 3-China says won't cease building on S. China Sea isles	6
GSDF to deploy 500 personnel to Ishigaki	6
Nuclear capable Arihant submarine successfully test-fires unarmed missile	6
(LEAD) N. Korea apparently fails to launch ballistic missile from sub: official	6
<b>MARITIME SAFETY AND SECURITY</b>	<b>7</b>
Asean countries agree to set up hotline to deal with maritime issues in the region	7
Sri Lanka willing to have joint patrolling	7
15 Govt agencies hold maritime security drill in Singapore waters	7
China, Vietnam to launch joint inspection on waters outside mouth of Beibu Gulf	7
Navy ready to protect Gwadar port, says chief	7
Navy remains on standby as pollution ailments pass half-million mark	8
Marine department receives equipment worth RM7.783 million to contain oil spills	8
RI, Malaysia not to arrest fishermen in grey area	8
Navy busts gang of ship robbers in Malacca Strait	8
Taiwan, Philippines sign fishing treaty	8
Asylum seeker boat towed away after coming within 200m of Christmas Island	8
Susi calls for global fisheries data-sharing	8
Arctic Nations Seek to Prevent Exploitation of Fisheries in Opening Northern Waters	8
Indonesia raises concerns over Australia's handling of asylum seekers	8
China navy holds first joint anti-piracy drill with NATO	8
<b>SHIPPING, PORTS, AND THE MARITIME ECONOMY</b>	<b>9</b>
Singapore interested in development of Arctic Shipping Routes	9
Singapore's MPA Sees Self-Regulated LNG Bunkering Industry	9
Endless nightmares in Korea's shipbuilding industry	9
While strengthening efforts against illegal fishing, Thailand but seeks new markets	9
Major Indonesian port operators sign concession agreement	9
Iceland's president calls for coordinated Arctic port development	10
Australia Defends Port's Lease to Chinese Company With Military Ties	10
Merger approval expected by January	10
VN seeks growth in 'blue economy'	10
Cosco and China Merchants complete Turkish terminal acquisition	10
Panama Canal congestion measures 'are working'	10
India to continue support Bangladesh in 'blue economy'	10
Singapore extends competition exemptions for liner shipping agreements	10
China ready for port, railway cooperation with Latvia	10
\$50bn Nicaragua canal postponed as Chinese tycoon's fortunes falter	10

## Notes

Please click on the links for the full report. All links and news reports are correct at the time of publication. Through this bulletin, you will be linked to external websites. We have no control over the nature, content, and availability of those sites. The inclusion of any links does not necessarily imply a recommendation or endorsement of the views expressed within them.

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[RSISMSP@ntu.edu.sg](mailto:RSISMSP@ntu.edu.sg)

## Maritime Security Programme, RSIS

### Editorial Team

Jane Chan

Collin Koh Swee Lean

Lee YingHui

### *Freedom of Navigation in the South China Sea*



#### Author

Sam Bateman

Adviser to the Maritime Security Programme at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore

There has been much talk of late about freedom of navigation (FON) in the South China Sea. For example, the Chairman's Statement of the 10th East Asia Summit held recently in Kuala Lumpur 'reaffirmed the importance of maintaining peace, stability, security and upholding freedom of navigation in and over-flight above the South China Sea'. But what exactly is meant by 'freedom of navigation' in the South China Sea?

Little attention has been given to answering this question. Is it a general FON available to all ships of all nations – or is it a wider notion of a general freedom of access to the waters and skies of the South China Sea? Or is it a narrower concept of the FON available to warships as a particular class of vessel? Or the freedom to undertake particular activities in the different types of maritime zone, such as the freedom of a warship to sail through the territorial sea of another country without prior notification or authorisation? Or the freedom to conduct surveys in another country's exclusive economic zone (EEZ) without seeking its permission? Or is it all of the above? These are complex questions with much depending on both the legal and strategic perspective taken.

The United States has declared a national interest in FON in the South China Sea. A frequent statement by U.S. officials is that 'the United States will continue to fly, sail and operate wherever international law allows'. That seems OK but a problem arises when American commentators and officials go further and refer to the South China Sea as 'international waters', or as part of the 'global commons', presumably to imply that FON there, perhaps even a general freedom to sail or fly anywhere in the sea, is without restriction. This is not so – restrictions do apply. The South China Sea is a semi-enclosed sea under UNCLOS Part IX comprised mostly of the EEZs or territorial seas of the bordering states, including of course China, which have significant rights and duties in those waters. To say that the South China Sea is 'international waters' overlooks the requirement for states exercising FON in the EEZ of another state to have 'due regard' to the rights and duties of that state.

Recently, the U.S. has launched freedom of navigation operations (FONOPs) around various features claimed by China in the South China Sea, although there has been much debate, including among American commentators,

about what precisely was the purpose of these operations. There is thus a question as to what FON the U.S. is mainly concerned about – is it FON generally in the South China Sea, or is it more specifically, the freedom to conduct military activities in China's EEZ or for American warships to transit freely through China's territorial sea? China's claims to exercise jurisdiction over military activities in its EEZ and to require prior notification of the transit by warships through its territorial sea are the major differences of view between the U.S. and China on navigational rights and freedoms.

China has repeatedly said that it will not impose restrictions on FON through the South China Sea. As President Xi Jinping recently told President Obama, China is 'committed to respecting and upholding the freedom of navigation and overflight that countries enjoy according to international law'. Given that a significant proportion of the shipping crossing the South China Sea is bound to or from China, this sentiment is understandable. FON in this sea are vitally important to all East Asian countries, as well as to the European Union and countries such as Australia and India, which have major trading relationships with the region.

Understanding statements about FON in the South China Sea requires an appreciation of the different interests of key strategic stakeholders in the sea. It also requires an appreciation of relevant navigational regimes under UNCLOS, the rights and duties of states in an EEZ, and possible questions associated with different interpretations of key concepts in UNCLOS (such as 'innocent passage', 'a freedom of navigation', 'a right of navigation', 'survey', 'marine scientific research', 'sovereignty' and 'sovereign rights') due to the possibility that meanings of these terms, and distinctions between them, can sometimes be 'lost in translation'.

A common understanding of FON would be a contribution to confidence-building and conflict management in the South China Sea. Particular attention is required to the need to reach some understanding of what actions by a coastal state may not have 'due regard' to the rights and duties of other states in its EEZ, and what actions by other states in the EEZ of a coastal state (such as certain military activities) may not have 'due regard' to the rights and duties of the coastal state.



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CHINA | 27 NOVEMBER | CHINA DAILY

## Beijing confirms military support facilities in Djibouti

Beijing confirmed on Thursday its construction of "military supporting facilities" in Djibouti, the first of its kind for China in Africa.

[Full Report](#)

UNITED STATES | 2 NOVEMBER | REUTERS

## U.S. Navy plans two or more patrols in South China Sea per quarter

The U.S. Navy plans to conduct patrols within 12 nautical miles of artificial islands in the South China Sea about twice a quarter to remind China and other countries about U.S. rights under international law, a U.S. defense official said on Monday.

[Full Report](#)

CHINA-UNITED STATES | 4 NOVEMBER | XINHUA NEWS

## China's naval hospital ship calls at U.S. port

China's naval hospital ship Peace Ark called at San Diego, Southern California, on Tuesday, kicking off a five-day friendly port visit to United States.

[Full Report](#)

CHINA | 5 NOVEMBER | CNN WIRE

## Chinese sub tracked U.S. aircraft carrier off Japan

An American aircraft carrier was closely tracked by a Chinese submarine off the coast of Japan last month, a U.S. defense official said, in the latest example of the test of wills between the two countries in the waters of the Pacific.

[Full Report](#)

CHINA-JAPAN | 5 NOVEMBER | THE JAPAN TIMES

## Japan, China agree to maritime communication mechanism to prevent conflict

The defense ministers of Japan and China have agreed in their first talks since June 2011 that defense exchanges and the early launch of a maritime communication mechanism will be important in preventing accidental clashes.

[Full Report](#)

*Continue on page 6*



Continued from page 5

INDONESIA | 8 NOVEMBER | ANTARA NEWS

### Indonesia deploys seven warships to Natuna

The Indonesian Navy has sent seven warships to the Natuna waters in the Sumatran province of Riau Islands to safeguard the country's territorial waters.

[Full Report](#)

AUSTRALIA-INDONESIA | 12 NOVEMBER | ANTARA NEWS

### Two Australian warships move to Java Sea to participate in exercise

Two Royal Australian Navy (RAN) warships, HMAS Arunta 151 and HMAS Sirius 266, departed for Java Sea on Wednesday to participate in the New Horizon 2015 joint exercise.

[Full Report](#)

CHINA | 13 NOVEMBER | THE ASAHI SHIMBUN

### Defense Ministry: Chinese Navy gathered intelligence near Senkaku Islands

A Chinese Navy intelligence ship apparently engaged in information-gathering activities in waters near the disputed Senkaku Islands on Nov. 12, the Defense Ministry reported.

[Full Report](#)



UNITED STATES | 13 NOVEMBER | REUTERS

### U.S. bombers flew near China-built islands in South China Sea: Pentagon

Two U.S. B-52 strategic bombers flew near artificial Chinese-built islands in the South China Sea this week and were contacted by Chinese ground controllers but continued their mission undeterred, the Pentagon said on Thursday.

[Full Report](#)

JAPAN | 20 NOVEMBER | THE JAPAN NEWS

### Abe hints at ops in S. China Sea

During a meeting with U.S. President Barack Obama on Thursday, Prime Minister Shinzo Abe expressed support for U.S. patrol activities in the South China Sea.

[Full Report](#)

CHINA-MALAYSIA | 22 NOVEMBER | THE STRAITS TIMES

### Malaysia to allow PLA navy use of strategic port

Malaysia has agreed to allow the Chinese navy the use of the strategic port of Kota Kinabalu on north-east Borneo, close to the disputed Spratly Islands, despite its own reservations about Beijing's activities in the South China Sea.

[Full Report](#)

CHINA | 22 NOVEMBER | REUTERS

### UPDATE 3-China says won't cease building on S. China Sea isles

China said on Sunday it will continue to build military and civilian facilities on its artificial islands in the disputed South China Sea and the United States was testing it by sending warships through the area.

[Full Report](#)

JAPAN | 24 NOVEMBER | THE JAPAN NEWS

### GSDF to deploy 500 personnel to Ishigaki

The government will send about 500 Ground Self-Defense Force personnel to Ishigakijima island in Okinawa Prefecture in a planned deployment to strengthen defense of the Nansei Islands, it has been learned.

[Full Report](#)

INDIA | 26 NOVEMBER | THE ECONOMIC TIMES

### Nuclear capable Arihant submarine successfully test-fires unarmed missile

India's first indigenously-developed nuclear-powered nuclear attack submarine, Arihant, has successfully test fired a dummy or unarmed missile, reliable sources said.

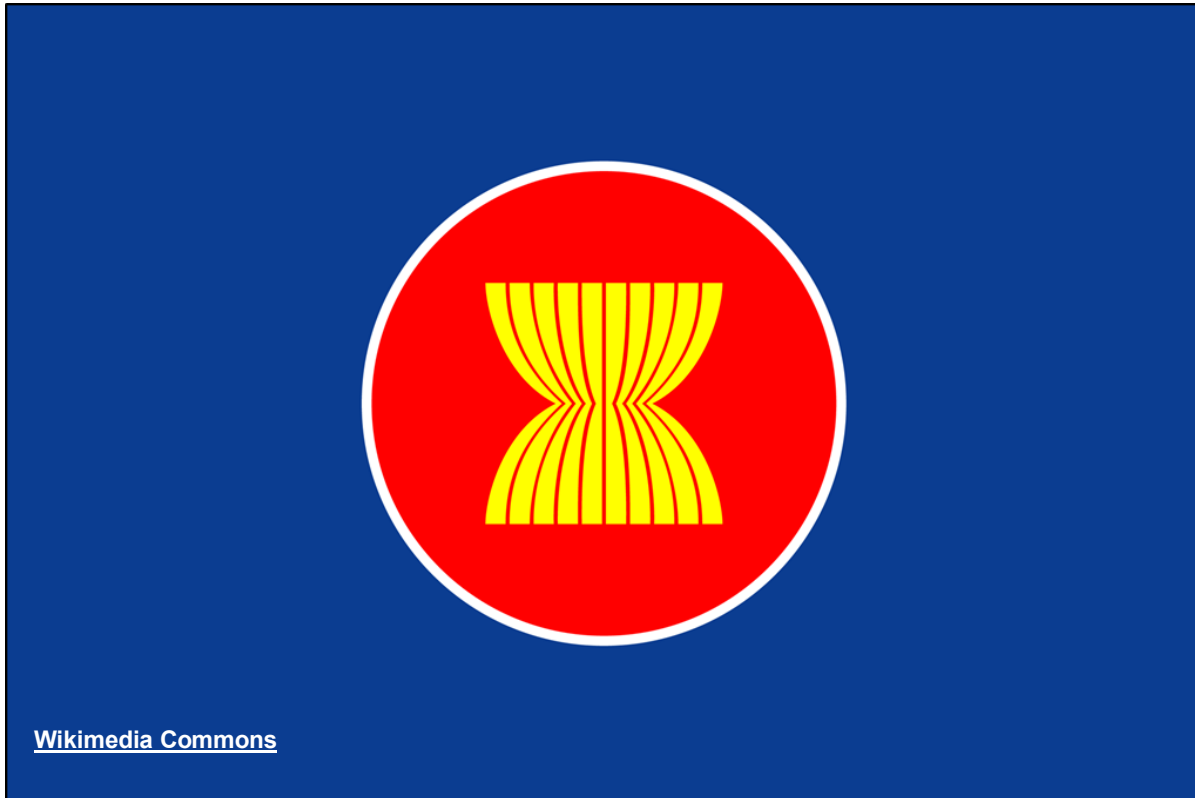
[Full Report](#)

NORTH KOREA | 28 NOVEMBER | YONHAP ENGLISH NEWS

### (LEAD) N. Korea apparently fails to launch ballistic missile from sub: official

North Korea apparently failed to launch a ballistic missile from a submarine, a South Korean official said Saturday, in a sign that Pyongyang has yet to master the technology.

[Full Report](#)



ASEAN | 4 NOVEMBER | INTERNATIONAL BUSINESS TIMES

## **Asean countries agree to set up hotline to deal with maritime issues in the region**

The 10-member Association of South East Asian Nations or Asean has proposed to set up a hotline to resolve maritime disputes and to ensure communication lines remain open between member countries during a crisis.

[Full Report](#)

INDIA-SRI LANKA | 3 NOVEMBER | THE HINDU

## **Sri Lanka willing to have joint patrolling**

Sri Lanka Navy's Commander Vice Admiral Ravindra C. Wijegunaratne on Monday expressed willingness to have joint patrolling with India to tackle the problem of alleged poaching by Indian (Tamil Nadu) fishermen in Sri Lankan waters.

[Full Report](#)

SINGAPORE | 5 NOVEMBER | CHANNEL NEWSASIA

## **15 Govt agencies hold maritime security drill in Singapore waters**

The annual exercise tests Singapore's maritime defence capabilities at a whole-of-government level, involving 900 personnel from 15 agencies.

[Full Report](#)

CHINA-VIETNAM | 6 NOVEMBER | CHINA DAILY

## **China, Vietnam to launch joint inspection on waters outside mouth of Beibu Gulf**

China and Vietnam agreed to launch joint inspection on the waters outside the mouth of the Beibu Gulf in December, said a joint communique released here Friday.

[Full Report](#)

PAKISTAN | 8 NOVEMBER | DAWN

## **Navy ready to protect Gwadar port, says chief**

Chief of the Naval Staff Admiral Mohammad Zakauallah has expressed resolve to ensure protection of Gwadar Port "against all asymmetric threats under the prevalent precarious internal and external security environment."

[Full Report](#)

*Continue on page 8*

Continued from page 7

INDONESIA | 7 NOVEMBER | THE JAKARTA POST

### **Navy remains on standby as pollution ailments pass half-million mark**

The Navy will keep three of its vessels on standby for evacuations at the Banjarmasin base in South Kalimantan, as the number of people affected by respiratory illnesses resulting from air pollution surpasses half a million.

[Full Report](#)

MALAYSIA | 10 NOVEMBER | YAHOO NEWS

### **Marine department receives equipment worth RM7.783 million to contain oil spills**

The Marine Department of Malaysia is committed to strengthening its activities in controlling and coping with oil spills off the coast of Johor.

[Full Report](#)

INDONESIA-MALAYSIA | 12 NOVEMBER | ANTARA NEWS

### **RI, Malaysia not to arrest fishermen in grey area**

Indonesia and Malaysia have agreed not to arrest fishermen carrying out their trade in the grey area between the two countries.

[Full Report](#)

INDONESIA | 13 NOVEMBER | THE JAKARTA POST

### **Navy busts gang of ship robbers in Malacca Strait**

Busted: Men suspected of robbing ships in the Malacca Strait, guarded by personnel from the Navy, are paraded for the news media on Thursday, following their arrest earlier this week.

[Full Report](#)

PHILIPPINES-TAIWAN | 20 NOVEMBER | TAIPEI TIMES

### **Taiwan, Philippines sign fishing treaty**

Taiwan and the Philippines have inked an agreement covering the cooperation of law enforcement agencies in fishing matters in overlapping waters earlier this month, the Ministry of Foreign Affairs revealed yesterday.

[Full Report](#)

AUSTRALIA | 20 NOVEMBER | THE GUARDIAN

### **Asylum seeker boat towed away after coming within 200m of Christmas Island**

A boat carrying asylum seekers was intercepted close to Christmas Island on Friday, the first to reach Australian waters since June 2014.

[Full Report](#)



INDONESIA | 20 NOVEMBER | THE JAKARTA POST

### **Susi calls for global fisheries data-sharing**

Maritime Affairs and Fisheries Minister Susi Pudjiastuti has called on like-minded governments to share monitoring data and vessel information to improve integrated global efforts to battle fisheries-related crimes.

[Full Report](#)

ARCTIC | 24 NOVEMBER | THE NEW YORK TIMES

### **Arctic Nations Seek to Prevent Exploitation of Fisheries in Opening Northern Waters**

Ruth Teichroeb, the communications officer for Oceans North: Protecting Life in the Arctic, an initiative of the Pew Charitable Trusts, sent a note this evening about new steps related to an issue I've covered here before – the rare and welcome proactive work by Arctic nations to ban fishing in the central Arctic Ocean ahead of the “big melt” as summer sea ice retreats more in summers in a human-heated climate.

[Full Report](#)

AUSTRALIA-INDONESIA | 27 NOVEMBER | REUTERS

### **Indonesia raises concerns over Australia's handling of asylum seekers**

Indonesia voiced concern on Friday that Australia had detained and returned 16 asylum seekers whose Indonesian boat was intercepted by the Australian navy a week ago without informing the Indonesian authorities.

[Full Report](#)

CHINA-NATO | 27 NOVEMBER | REUTERS

### **China navy holds first joint anti-piracy drill with NATO**

Chinese naval forces involved in anti-piracy patrols in the Gulf of Aden have held their first joint drill with NATO ships carrying out the same mission, China's Defense Ministry said on Friday, as China seeks a greater global security role.

[Full Report](#)





SINGAPORE | 13 NOVEMBER | SHIP AND BUNKER

## **Singapore interested in development of Arctic Shipping Routes**

Singapore has singled out the Arctic as being one of the areas of interest to the city-state, having noted the possible implications of newly-opened sea routes due to changing climate conditions in the region, the Singaporean government announced in a statement.

[Full Report](#)

SINGAPORE | 2 NOVEMBER | SHIP AND BUNKER

## **Singapore's MPA Sees Self-Regulated LNG Bunkering Industry**

Singapore's Liquefied Natural Gas (LNG) industry should be self-regulating and state policy intervention minimised, said Parry Oei, director of port services division of MPA, during the Gastech 2015 conference in Singapore.

[Full Report](#)

KOREA | 6 NOVEMBER | BUSINESS KOREA

## **Endless nightmares in Korea's shipbuilding industry**

Korea's shipbuilding companies, which suffered from massive losses due to the suspension or cancellation of offshore plant projects and refusal of delivery from ship owners, are now having more difficulties with the cancellation of contracts to build general merchant vessels, including container ships.

[Full Report](#)

THAILAND | 6 NOVEMBER | FISH INFO & SERVICES

## **While strengthening efforts against illegal fishing, Thailand but seeks new markets**

The Thai Government has passed new laws to address illegal fishing and aid those legal fishermen that have been affected by the adopted measures.

[Full Report](#)

INDONESIA | 11 NOVEMBER | SEATRADE MARITIME NEWS

## **Major Indonesian port operators sign concession agreement**

Indonesian state-owned port operators PT Pelindo I, III and IV have signed a concession agreement with the Transportation Ministry, effectively ending their role as both operators and regulators, local reports said.

[Full Report](#)

*Continue on page 10*

Continued from page 9

ICELAND-SINGAPORE | 12 NOVEMBER | SPLASH 24/7

### **Iceland's president calls for coordinated Arctic port development**

The president of Iceland, Ólafur Ragnar Grímsson attended the Arctic Circle Singapore Forum as part of his three-day state visit to Singapore. Grímsson stressed that the Arctic's development needed to be cooperative, not competitive.

[Full Report](#)

CHINA | 13 NOVEMBER | THE NEW YORK TIMES

### **Australia Defends Port's Lease to Chinese Company With Military Ties**

A decision by Australia to lease part of a port to a Chinese company became the subject of controversy on Friday after a report by a well-regarded research institute questioned the wisdom of the transaction and highlighted the firm's links to China's military.

[Full Report](#)

CHINA | 18 NOVEMBER | THE WALL STREET JOURNAL

### **Cosco-China Shipping Group Merger approval expected by January**

The Chinese government is expected to approve by January a merger between its two state-owned shipping giants, creating the world's fourth-largest container-shipping line, people with knowledge of the matter said Wednesday.

[Full Report](#)

VIETNAM | 19 NOVEMBER | VIET NAM NEWS

### **VN seeks growth in 'blue economy'**

Viet Nam will work harder to contribute to a blue economy and sustainable maritime growth for the seas of East Asia (SEA), said Ho Kim Lan, an official from Viet Nam Seaports Association yesterday.

[Full Report](#)

CHINA-TURKEY | 19 NOVEMBER | LLOYD'S LOADING LIST

### **Cosco and China Merchants complete Turkish terminal acquisition**

COSCO Group and China Merchants Group have completed their joint acquisition of Turkey's third largest container terminal, a key step in realising Beijing's Maritime Silk Road initiative.

[Full Report](#)

PANAMA | 24 NOVEMBER | LLOYD'S LOADING LIST

### **Panama Canal congestion measures 'are working'**

Continued measures by the Panama Canal Authority (ACP) to ease the flow of vessel traffic and transit time in the waterway have begun to bear fruit.

[Full Report](#)



BANGLADESH-INDIA | 24 NOVEMBER | BDNEWS24.COM

### **India to continue support Bangladesh in 'blue economy'**

He said the cooperation 'to harness marine resources and building resilience in the Sundarbans eco-system' will be provided both bilaterally and on a regional basis.

[Full Report](#)

SINGAPORE | 25 NOVEMBER | SPLASH 24/7

### **Singapore extends competition exemptions for liner shipping agreements**

Singapore's Ministry of Trade and Industry (MTI) is to extend the block exemption order (BEO) for liner shipping agreements (LSAs) for another five years until December 31, 2020.

[Full Report](#)

CHINA-LATVIA | 26 NOVEMBER | XINHUA NEWS

### **China ready for port, railway cooperation with Latvia**

China is ready for cooperation with Latvia in ports, logistics park and railway construction, said Premier Li Keqiang in a meeting with his Latvian counterpart Laimdota Straujuma on Thursday.

[Full Report](#)

NICARAGUA | 30 NOVEMBER | HELLENIC SHIPPING NEWS

### **\$50bn Nicaragua canal postponed as Chinese tycoon's fortunes falter**

The world's biggest canal project – a \$50bn interoceanic canal through Nicaragua– has been delayed, following an environmental report and a collapse in the fortunes of the Chinese businessman behind the company that planned to build it.

[Full Report](#)