

## *Legal Cross Currents with China: The PRC Promulgates Anti-OSRA Shipping Policies*

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Here we go again with our friends across the Pacific. This time, the Peoples' Republic of China has enacted, effective January 1, 2002 a new shipping act entitled Regulations of the PRC on the International Maritime Transportation (or the "Decree," as the Chinese call such things). It flies right in the face of some of the most fundamental objectives of Uncle Sam's Ocean Shipping Reform Act ("OSRA"), implemented amidst much controversy on May 1, 1999.

The Decree really socks it to U.S. and other non-Chinese carriers, intermediaries, shippers and other service providers by restricting their ability operate in China. Non-Chinese players have to jump some forbidding hoops to get licenses and authority to do business there. For instance, foreign entities are confined to certain geographic areas when opening offices in China, and can't offer some pretty key services, such as offering multi-modal, through transportation. Most importantly, the Decree's old-style regulatory regime runs counter to OSRA's provisions regarding freedom to negotiate the terms of carriage, as well as service contract confidentiality. The Chinese are still into such antiquated concepts as required tariff filings denoting rates which cannot take effect until thirty days after publication. NVOCC's have to post a bank "deposit" of some \$96,000 to do business in China.

The rational for such onerous requirements appears to be Chinese interest in keeping control over, and profits derived from, international transportation to and from China. Foreigners can circumvent some of the Decree's nasty effects by hooking up with a Chinese partner in a joint venture arrangement. Of course, that also means paying taxes to, and leaving profits in, China.

It didn't take long for American shipper, carrier and intermediary organizations, as well as the federal government, to cry foul. The U.S. Federal Maritime Commission, which has had its eye on Uncle Sam's Asian trading partners for quite some time now, quickly rallied to the cause. Within weeks of the Decree's implementation, the FMC formally asked Beijing just what in the world it means by enacting law that largely ignores market-driven forces, and subjects non-Chinese entities to disadvantages the Chinese don't face when they open shop abroad. Along with that request for an explanation was one for a respite from the Decree's implementation – a diplomatic time-out to avoid immediate repercussions on this side of the big pond.

The FMC has an impressive track record recently in socking it to our Pacific rim trading partners who impose unfair disadvantages on American transportation players. Remember back in 1997, when the Japanese government granted its transportation industry's private sector veto authority over American carriers and intermediaries interested in doing business in Japan? The FMC tried to convince Tokyo that was dirty

pool, but couldn't get the policy reversed. After talks broke down, Japanese carriers got to pay \$100,000 sanctions when they arrived stateside. Of course, that approach was more effective. Things heated up again last summer, when it appeared Japan still was cutting Uncle Sam an unfair deal. Again, the FMC's response prompted Japanese policy changes.

This time around, the feds have issued a Notice of Inquiry stating its concerns and soliciting comment from all interested players regarding the Decree (if you happen to be one, log onto the FMC website and state your beef). If the FMC and Chinese shipping authorities don't reach agreement, Chinese ships calling on U.S. ports might be greeted by Uncle Sam's hand, palm up, awaiting payment of sanctions similar to those imposed on ships flying the Rising Sun a few years ago. The FMC has other guns in its arsenal to combat unfair policies on a more diplomatic level as well.

The United States and many of our significant trading partners have successfully moved from a heavily regulated, international shipping environment into one guided by players' individual circumstances. However, certain parts of the world, particularly those generally accustomed to substantial regulation, remain locked in an age when governmental watchdogs dictated who did what, when, where and for how much in the shipping business. Consequently, the FMC remains an essential force to combat the negative impacts our transportation industry might suffer by the interaction of the two ways of thinking.

***Ref: The U.S. Federal Maritime Commission Website, [www.fmc.gov](http://www.fmc.gov), containing the notice of inquiry and other specifics***