

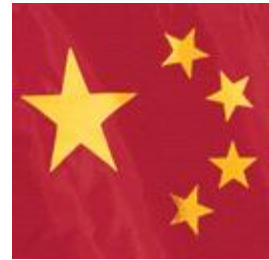
## Lost in Translation

*Shippers, regulatory agencies attempt to decipher China's container carrier rate-filing rule, while carriers simply comply.*

China's new regulation requiring container carriers to file tariff and negotiated freight rates with a Ministry of Transport affiliate called the Shanghai Shipping Exchange is raising concerns among shippers.

It seems likely to be a subject of discussion when representatives from the U.S. Maritime Administration and China hold their annual consultative talks in December.

Officials from MarAd, the Federal Maritime Commission and State Department all said in late October and early November they were trying to get additional information about the regulation, including official translations of the rules.



Lidinsky

FMC Chairman Richard A. Lidinsky Jr. said his agency had not heard any complaints from carriers about the rules, which were introduced June 15 and went into effect Aug. 1. He met with the National Industrial Transportation League to hear its concerns about how rules could affect shippers, including the confidentiality of information in confidential contracts. But as of early November no request had been made for an investigation, he said.

“We are concerned about any discrimination against any U.S. carrier,” Lidinsky said. “But each country has a right to formulate its own maritime regulations.”

Stephen Miller of the State Department said shippers seem concerned both about maintaining the confidentiality of information in their contracts and making sure the market, not a government agency, determines the level of freight rates.

An English language document, “Circular No. 20 (2009),” published on China’s Ministry of Transport Web site, said the rate-filing rule was being implemented “for the purpose of maintaining the order of China’s international container liner market, protecting fair competition, safeguarding the legitimate rights and interests of the relevant parties involved in international maritime transportation and promoting healthy development of shipping industry.”

In October, the NIT League said, “It appears that a carrier must file both tariffs and negotiated rates with the SSE that includes both minimum and maximum rates quoted to the public.”

The rules’ scope appear to differ from past regulations.

Zheng Xie, an attorney with the Washington, law firm Rodriguez, O’Donnell, Gonzalez & Williams, noted that in 1996 the Ministry of Transport, then known as the Ministry of Communication, issued rules requiring liner operators to file rates from Jiangsu, Zhenjiang and Shanghai to foreign ports. In 2002 Article 20 of China’s regulation on International Maritime Transportation required more extensive rate filing, but because of technical problems had never been fully enforced.

Rod Riseborough, chief executive of Container Trade Statistics, a subsidiary of the European Liner Affairs Association, said the Chinese regulation is a major administrative burden for carriers, especially those in European trades where about one-third of cargo moves under spot rates.

He said carriers are filing rates for all cargo moving out of China, though Circular No. 20 said, “the freight filing obligor shall file the range of ocean freight of export containerized goods carried from China’s ports to foreign base ports, i.e. the maximum and minimum freight quotes. Such range shall be normal and reasonable.”

Maersk, in customer notice, said the rule “applies to all direct shipments originating in 10 mainland China ports to 53 overseas destination ports. The tariffs, including all surcharges, should be filed at least 30 days before they become effective. The contracts that are filed should include details of customer name, port of origin/destination, the rate itself, cargo/container types as well as the effective date of the contract.”

Xie, who has reviewed the requirements, said the government has tried to reduce the burden for operators by requiring only the range of rates, minimum and maximum, from Chinese ports to the foreign base ports.

The NIT League has expressed particular concern over language in the Ministry of Transport circular that said, “Liner operators should follow the legal operation and *bona fide* principles, improve transport service quality and efficiency, reduce operational costs, and charge normal and reasonable freight rates in light of actual transport operational costs and supply and demand conditions of the market. Any cargo soliciting at ‘zero’ or ‘negative’ freight rate shall be prohibited.”

Peter Gatti, executive vice president of the NIT League, said his group believes “the market should determine what rates should be rather than the government saying what is fair and reasonable.”

He said the circular’s language is at variance with the FMC practice.

“The FMC does not prohibit, it does not sanction, it does not evaluate rates,” he noted. “There is no judge at the FMC that says this rate is good, this is not. It does not do it with freight rates, surcharges or any ancillaries, period. It is a completely different scope of program and this absolutely runs the risk of the government of China deciding what is proper remuneration for carriers carrying their exports. In view of the volume of traffic coming out of China, that has a significant impact on world trade,” he said.

The U.S. Shipping Act of 1984 does, however, prohibit controlled carriers from charging rates that are below a “just or reasonable” level.

Gatti also questioned whether the rules violate trading principals promulgated by the World Trade Organization.



Gatti



van der Jagt

Nicolette van der Jagt, secretary general of the European Shippers Council, said her organization is “looking into the new Chinese regulation and shares the concerns voiced by the NIT League. At this stage we are trying to find out more details and get a technical translation of the rules. But from a principal point of view we are strongly opposed to any government interference in trying to regulate prices.

“We will also bring this to the attention of the EU competition authorities,” she added.

John Lu, chairman of the Asian Shippers Council, said his organization is also looking into the situation, and is worried about the Chinese government deciding what a fair rate is as opposed to letting the market decide.

An article in Japan's *Shipping and Trade News* said rates rose 19 percent from July 24 to Aug. 21, but it noted this might reflect improved market conditions. As measured by the Shanghai Shipping Exchange's new Shanghai Containerized Freight Index, rates on 15 trade lanes rose 6 percent from Oct. 16, when the index went into use, to Nov. 6.



Lu

The circular said any so-called “obligor” or operator that holds an “Operation Certificate of International Liner Services and engages in the container transport” must file tariff and negotiated rates with the Shanghai Shipping Exchange, which “shall properly keep the filed freight information without prejudice to any commercial confidentiality.”

The Ministry of Transport “has ensured us that all contractual details are safe and will not be passed on to third parties,” said Maersk in its customer advisory.

The regulation apparently covers liner companies including slot charterers, but apparently not non-vessel-operating common carriers, said Ed Greenberg, a Washington attorney for the National Customs Brokers & Forwarders Association of America.

But Xie said while Circular 20 does not require NVOs to file, a Ministry of Transport official said NVOs would be required to file when the situation is “mature.”

The Ministry of Transport said carriers “shall file the range of ocean freight of export containerized goods carried from China’s ports to foreign base ports, i.e. the maximum and minimum freight quotes. Such range shall be normal and reasonable. In case that the freight rates are beyond the filed range of tariff rates, the obligor shall file the rates as negotiated rates. These negotiated rates shall enter into force 24 hours after the acceptance of the filing.”

The ministry lists 10 Chinese ports and 53 selected ports around the world as “base ports:”

- Ten U.S. ports — six on the West Coast and four East Coast.
- Southeast Asia, seven.
- Japan, seven.
- Korea, four.
- Mediterranean, seven.
- North Europe, five.
- Persian Gulf and Red Sea, four.
- South Africa and South America, five.
- Australia and New Zealand, four.

It’s unclear how the tariff filing requirements are linked to the Shanghai Shipping Exchange’s recent revision of its Shanghai Containerized Freight Index and plans to offer derivatives based on the index ([See related story](#)).

“The Shanghai Shipping Exchange has been going on now for quite a while,” said Miller of the State Department. “We as a government have talked to the Chinese about the Shanghai Shipping Exchange, and we were told several years ago that membership by U.S.-based shipping companies was not mandatory.”

The circular said liner operators who fail to go through filing formalities or apply with the freight rates as filed are “required to rectify within a certain time limit” and will be fined 20,000 to 100,000 China Yuan Renminbi (from \$2,929 to \$14,644 based on exchange rates at the end of October.)

If filed freight rates “go beyond the normal and reasonable scope, which seriously deviate

from the average level of the filed rates by the liner operators of the same scale offering the same service and may impair the market fair competition, the Ministry of Transport will conduct investigation,” the circular said. Liner companies must cooperate and provide requested documents, and if they refuse, conceal or misstate information can face a similar 20,000 to 100,000 Renminbi fine.

Xie said in mid-October the Ministry of Trade imposed a penalty on 10 liner operators because they failed to fully comply with the 20 Circular. She said as of Aug. 27, 120 companies had filed 39,000 items of tariffs and 270,000 negotiated rates.

The circular also advises “Ministry of Transport shall adopt restrictive or prohibitive measures such as limiting voyage frequency, suspension of tariff rate application, suspension of freight filing acceptance towards the liner operator whose business conducts impair fair competition.”

In 1996, China’s Ministry of Communications issued regulations requiring carriers to file rates. At that time, U.S. carriers expressed concern about providing rate information to the Chinese government because of its involvement in Chinese shipping companies. But since that time, major U.S. carrier Sea-Land has been purchased by Denmark’s A.P. Moller - Maersk Group and APL by Singapore’s Neptune Orient Lines.