Cross Border Business Law Blog

China Introduces a New Class of Non-Truck-Owning-Carriers to Reduce Logistics Cost and Improve Efficiency

By Richard Gluck on 8.31.17 | Posted in International, Transportation Planning

In line with PRC's 13th Five-Year-Plan and "Internet+" initiative, the Ministry of Transport (MOT) launched the Non-Truck-Owning-Carrier program as a one-year pilot beginning December 2016. The goal of the program is to introduce innovation in surface transportation to enable the logistics industry to operate with low cost and high efficiency.

Over the last decade, the PRC has made substantial transport infrastructure investments in building and upgrading its ports, roads, airports and rail network. Yet the PRC's logistics cost as a percentage of GDP is still very high compared with developed nations.

A 2012 Asian Development Bank report *Transport Efficiency Through Logistics Development* examined the issues causing the high logistics cost and pointed out that the PRC logistics industry lacked the intermediaries who can provide the technology solutions, customer service, and end-to-end integration.

"*Existing domestic transport regulations are oriented toward asset-owning carriers rather than non-asset-owning intermediaries. There is no provision governing transport intermediaries in existing transport regulations and tax laws in the PRC. The current regulation requires that a road freight forwarder must have its own fleet to be able to register and operate in the PRC. This makes it difficult for non-asset-owning transport intermediaries to obtain proper legal standing and tax treatment.*"

Obstacles Encountered by C.H. Robinson in Entering the Market in the People's Republic of China

C.H. Robinson's non-asset-owning business model ran into difficulty after it entered the People'sRepublic of China (PRC) market. Because transport regulation in the PRC focuses on asset-owning carriers, the company was unable to qualify for proper legal status within the PRC's regulatory regime and failed to obtain approval to issue tax invoices to shippers. It is unfortunate that a large, successful global logistics enterprise falls within this regulatory "blind spot" of the PRC."

In fall of 2016, Senior Representatives of Sino-American Logistics Council (SALC) and Transportation Intermediaries Association (TIA), including GSB attorney Richard Gluck, met with representatives of China's MOT responsible for drafting the Non-Truck-Owning-Carriers (NTOC) regulations to exchange information about the U.S. third-party logistics industry and the NTOC pilot. Ministry officials had unveiled the initiative at an international conference sponsored by SALC and Wuzi University in Beijing.

The MOT is responsible for the overall NTOC pilot program. The pilot is being run nationwide for a period of one year, beginning December 2016.

Although the regulations on licensing, operation monitoring, credit evaluation and tax collection for non-truck operating carriers are not currently complete, MOT will gradually adjust and complete the regulations based on the results of the pilot. MOT has issued an initial policy statement setting forth the basic requirements for qualification as a NTOC:

Who will lead the pilot program, and who can participate? The provincial transportation authorities are responsible for the organization and implementation of the pilot work. Foreign and domestic firms are eligible for the pilot program. Each provincial transportation authority will choose the companies from their respective province to participate in the pilot program.

Requirements of pilot enterprises. The pilot enterprises must satisfy the following conditions:

1. strong ability for arrangement of shipments and freight vehicle integration
2. providing an internet-based logistics information platform
3. setting of safety procedures and standard operation management
4. strong financial ability to pay compensation to carriers, and to take the risks for the entire carriage including cargo loss and damage.

Technology. In line with China's Internet+ initiative, the NTOC program requires participants to utilize technologies such as mobile internet connectivity to build their logistics information platform.

NTOC and its carriers. NTOCs are not required to own their own equipment, but they must have the ability to select responsible underlying carriers, make sure that they are safe, efficient and reliable, and oversee the transportation arrangements, end-to-end. The NTOC will sign transportation contracts with shippers and undertake all responsibilities and obligations of a carrier. There will be no differentiation of truck broker and freight forwarder as in the U.S.

According to the MOT policy statement, under the NTOC program, pilot enterprises should sign transport service contracts with the actual carriers, establish necessary compensation mechanisms, take the responsibility for the entire carriage; review the business qualification, vehicle registration certificate and road transportation certificate of the actual carrier as well as the driver's driving license and practitioners' qualification certificate to ensure the quality of transportation service.

Dangerous goods transportation. It is excluded from the pilot program.

Value-added tax. An important element of the program is that non-truck operating carriers are now recognized as logistics companies and will pay value-added tax based on "transportation service" rendered.

Pilot enterprises and railways, ports and civil aviation enterprises. Pilot enterprises are encouraged to expand their business scope, strengthen their cooperation with railways, ports and civil aviation enterprises by interconnecting and through their logistics information platforms.

Innovative logistic services. NTOCs are welcome to offer innovative logistics services such as intermodal freight transportation combining road-railway, road-water and road-air, drop and pull transport, joint distribution of both full truckload and less-than-truckload transport, and other advanced transport modes.

Pilot enterprises and its cross-regional network operations. Pilot enterprises are encouraged to undertake cross-regional network operations and set up branches to engage in non-truck operating carriers business throughout mainland China.

To whom should pilot enterprises report? Pilot enterprises are required to report their operational details to the provincial transportation authorities and the National Transport and Logistics Public Information Platform. MOT hopes to promote expansion of the successful pilots based on the reported results. MOT's goal is to encourage the development of a robust third party logistics industry in China, to reduce the costs and increase the efficiency of moving goods within China. The PRC government has put a high priority on the growth of the industry, which it regards as a key to the economic success of China's ongoing urbanization and its pivot toward an economy based more on domestic consumer demand and less dependent on exports.

China's developing NTOC industry offers potential business opportunities for American firms. The NTOC program is modeled on the U.S. non-asset based third-party logistics system. The U.S. has a highly developed non-asset based logistics industry that has contributed in large part to the reduction in the cost of logistics over the past twenty years, so it is expected that the U.S. industry has businesses with the expertise, experience, technology or services that can help Chinese businesses gain a competitive advantage and accelerate the Chinese industry's development.

SALC will be organizing a delegation of Pilot NTOC's to visit the United States later this year with the goal of introducing Chinese businesses to U.S. 3PLs and service providers to the industry with management expertise, experience, technology or specialized services such as carrier qualification, load matching, back office systems and the like which may be transferable to or adapted by China. The first such delegation, consisting of senior executives from logistics companies in Shandong Province, came to the US in late July and met with their U.S. counterparts in Los Angeles, Chicago and Washington, DC. Another larger delegation will be touring the United States this fall. GSB partner Richard Gluck is organizing these trips and consulting with the participants and the Chinese MOT to foster greater collaboration between the US industry and China.

Feel free to contact Richard Gluck at richard.gluck@foster.com or Chung Tam, Executive Director of the Sino-American Logistics Council at ctam@uschinalogistics.org.

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