

CHINA'S NEW REGISTRATION REGULATIONS FOR UNITED STATES AND NON-U.S. DOMICILED NVOCCS

By: Henry P. Gonzalez, LL.M and Carlos Rodriguez, Esq.
Rodriguez O'Donnell Ross Gonzalez Williams, PC

This document provides a summary of the intention of the current memorandum between China and the U.S. - Oct. 2007.

CHINA'S MINISTRY OF COMMUNICATION (MOC) WARNS OCEAN CARRIERS: ACCEPT CARGO ONLY FROM REGISTERED NVOCCS

On June 14 and June 19, 2007, the MOC issued Notices to ocean carriers that they must immediately stop doing business with non-MOC licensed NVOCCs. Significant penalties will be imposed for ocean carriers that violate this regulation. The carrier members of the Trans-Pacific Stabilization Agreement have been counseled to take serious steps in policing this rule. NVOCCs can expect rough going on the high seas in the U.S.-China trade lanes.

NVOCC CONFUSION

Some NVOCCs have complained to the Federal Maritime Commission that there are certain compliance issues in play that could bring major disruption to the U.S.-China trade lanes. Some U.S.-based NVOCCs have been confused regarding MOC's requirement that U.S. NVOCCs must pay a 800,000 RMB cash deposit, and a 200,000 RMB cash deposit for each branch operated in China. Other U.S. NVOCCs also are not certain about the registration process in China, what documents to submit and in what language, the difference between the "liaison" vs. "legal representative" vs. the required "entrusting agent" in China authorized to issue the U.S. NVOCC's bill of lading.

BACKGROUND OF MOC'S REGISTRATION REQUIREMENT

The MOC announced on June 14, 2007 that it was enforcing its laws and regulations as contained in Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation, Decree No. 1 (MOC), January 20, 2003, Articles 7 and 8, with regard to the registration of NVOCCs and their bills of lading in China. Specifically, the MOC informed liner carriers that they must now only accept cargo in the China trades from NVOCCs which have met the registration requirements. As a result there has arisen some confusion in how this enforcement activity will be enforced and how it will interface with the U.S.-China Maritime Bilateral



Agreement, dated December 8, 2003, and Memorandum of Consultations. As a result of this Agreement and Consultations, the Federal Maritime Commission promulgated rules in Docket 02-04 which created an alternative bond solution to the cash deposit requirement of the aforementioned Regulations. The interplay of all of the above has caused significant concern in the U.S. among NVOCCs interested in doing business in the U.S.-China trades and those NVOCCs intending to do business in the China-foreign cross trades.

REGISTERED NVOCCS

- If your firm accomplishes its NVOCC function via an overseas FMC **registered** NVOCC with a \$150,000 bond, **the only way** it can issue its bill of lading in the U.S.-China trade lanes is by meeting the MOC registration/licensing requirements by depositing 800,000 RMB, and an additional 200,000RMB for each additional branch office in China. **(A registered NVOCC is not a licensed U.S. NVOCC.)**

(continued)



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U.S. LICENSED NVOCCS - THE REGISTRATION PROCESS

The China Rider only applies to freight from China to the United States.

- If the NVOCC is a U.S. licensed NVOCC, especially if it is interested in shipping in the China cross-trades, in addition to the U.S.-China lanes, it can also follow the MOC registration/deposit procedure noted on the front, **or**
- A U.S. licensed NVOCC must meet the following requirements instead of making the monetary deposits noted above, especially if it is only interested in the U.S.-China lanes:

1. “MUST BE A LEGAL PERSON REGISTERED BY U.S. AUTHORITIES”

This means a corporation formed in the United States.

2. “MUST OBTAIN AN FMC LICENSE WHICH EVIDENCES NVOCC ELIGIBILITY.”

Must have a license, and not be a registered NVOCC.

3. “MUST PROVIDE EVIDENCE OF FINANCIAL RESPONSIBILITY IN THE TOTAL AMOUNT OF \$96,000 U.S.” (NOW \$126,000 U.S. BECAUSE OF CURRENCY FLUCTUATIONS)

This means the NVOCC must have a bond certificate/rider in the specified amount. This means that the basic \$75,000 FMC bond must be provided to MOC and an Optional Bond Rider in the amount of \$21,000 also must be provided to MOC. Both of these bonds must be authenticated by the FMC, U.S. State Department, and the Chinese Embassy in Washington, D.C. or other Chinese Consulate Office in a designated U.S. city where the U.S. NVOCC is incorporated.

4. The above requirements are contained in the **Memorandum of Consultation (“Memorandum”)** between the U.S. and China.

Additionally, the Memorandum requires that the above conditions must be demonstrated by the applicant with “authentic and valid documentation” to the appropriate MOC office in China.

- Must establish a “point of contact” in a location in China. There are specific procedures/ documents to be filed for establishing this point of contact, and for establishing an agency relationship whereby that Chinese person can issue bills of lading on behalf of the U.S. NVOCC.
- The non-U.S. domiciled NVOCC’s bill of lading must be registered in the locality of this point of contact or liaison office.

- The MOC also requires the following:

- a. a letter of application;
- b. a feasibility study report;
- c. the business registration noted in the second bullet above;
- d. sample bills of lading and its terms and conditions; and
- e. introduction to agent form, power of attorney, and articles of incorporation or certificate of good standing, and the documents noted above related to the FMC license, the optional bond rider in the amount of 21,000.

- The Implementing Regulations of the MOC state that the application must be processed within 15 days of receipt of the filed application, but the MOC may take a bit longer to complete the process.

OTHER IMPORTANT POINTS IN THE REGISTRATION PROCESS

- It should be noted that name appearing on the U.S. NVOCC’s bill of lading must be the same as the U.S. NVOCC applicant seeking to register in China.
- The U.S. NVOCC shall appoint a “point of contact” for administrative and legal matters” similar to a registered agent in the U.S. for the receipt of service of process. The Chinese “point of contact” can be the same as the Chinese “entrusting agent” for issuance of the U.S. NVOCC’s bill of lading.
- The “entrusting agent” must be a qualified Chinese agent registered as an NVOCC agent in China and proof of that agent’s business and NVOCC license in China must also be filed with MOC.
- All duly registered U.S. NVOCC and its registered Chinese agent in China must have their respective names appear on the MOC’s list of “Registered NVOCCs.” This is the list that vessel carriers will resort to confirm that the U.S. NVO and its agent are properly registered and cargo can be tendered to the vessel carrier.

U.S. NVOCCS SEEKING TO REGISTER IN CHINA TO ACT AS AN NVOCC BETWEEN CHINA AND ALL OTHER COUNTRIES

The registration process and documents requirements for this category of companies are very similar to those U.S. NVOCCs referenced-above except that an 800,000 RMB cash deposit in China is required. Considering that NVOCCs under this category may be more established and larger, they might be interested in setting up their own subsidiaries or representative offices in China.



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