

China's Cabotage Law Policy: from Restrictive to Flexible

Yu Luan ^{1*}

¹ School of Law, Shanghai Maritime University, China

*Corresponding author: Yu Luan

Abstract

The cabotage law of China has always been considered restrictive. But it changes with time due to market needs. The body of literature on one specific city influenced by such policy or discussion about agreement or disagreement when it is predicted to change is not small. A thorough analysis of the policy of China's cabotage law from restrictive to flexible is out of the scope of the present paper. It is necessary to present that China's cabotage law policy has evolved from one that is restrictive to one that is flexible. Coastal shipping is the component that international shipping enterprises are most concerned about because of its appreciable economic worth. It is also the most restrictive part at present. Now there is a new measurement coming into force to open this restriction. This adjustment has an ambiguous impact on domestic shipping enterprises, domestic ports and foreign shipping enterprises. Moreover, the current circumstance in China is consistent with the policy objectives of cabotage law reservation. It's unnecessary to deregulate the coastal shipping. But, the willingness of openness of government is sincere and strong. The next step of this policy's development is better to maintain the status quo and take measures according to specific matters.

Keywords

Cabotage law; Shipping market; Flexible adjustment

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1. Introduction

The cabotage law in China can be said as with a restrictive regulation. At least it is stated in some reports specialized in cabotage law study all around the world, like Cabotage Laws of the World released by SRI. However, this research found that cabotage law in China is not so restrictive. In addition, the policy on cabotage law turns flexible in recent years. Furthermore, a new regulative order issued on Nov 18 2021 allows eligible international voyage ships without the Five-Starred Red Flag to pilot coastal shipping for foreign trade containers between nominated Chinese coastal ports. It is evidence to prove China with the flexible cabotage law now and could be a signal to predict the tendency of coastal transport policy in China.

The State Council, in a reply on Nov 18, approved interim adjustments (from Nov 18, 2021, to Dec 31, 2024) to item 2 of article 22 of the regulation on international marine transport and article 11 of the regulations on the administration of domestic waterway transport at the Lingang Special Area of China (Shanghai) Pilot Free Trade Zone. (Hereinafter known as Reply)

During the validity period, eligible international voyage ships without the Five-Starred Red Flag, wholly owned or controlled by international container liner companies from foreign countries, Hong Kong Special Administrative Region (SAR), and Macao SAR, will be permitted to pilot coastal shipping for foreign trade containers between Dalian Port, Tianjin Port, and Qingdao Port and Yangshan Port in Shanghai, with Yangshan Port as the port of trans-shipment. (State Council of PRC, 2021)

Here, coastal shipping is unique in this regard. "Coastal Fishyback" is referred to as "Coastal Fishyback " in various connected documents and articles.¹ And it's important to note this word because its meaning is not

¹ Here translate Chinese word“捎带” as Coastal Fishyback.

totally the same as coastal shipping in Chinese. Coastal Fishyback has the “incidental” meaning and does the business just “by the way” in some sense. This term is used to distinguish it from ordinary business. Although this business is expressed as coastal shipping in English in the Reply, it is referred to as Coastal Fishyback in Chinese. Actually, it is the cabotage law of China at the root. However, the shipping law has not yet been promulgated in China, so this is an alternative statement that is outlined in other rules. The Reply, to some extent and degree, breaks China's originally restrictive cabotage law. The next step in China's cabotage law change attracts the attention of carriers, particularly foreign carriers. They are seriously concerned about the further development of China's shipping policy and law.

2. Coastal Fishyback broke the existence of cabotage law

About this specific policy's change, it could be traced back to the 2013 “Framework Plan for the China (Shanghai) Pilot Free Trade Zone”. It allowed foreign ships directly or indirectly owned by Chinese invested companies to pilot the coastal shipping (here means Coastal Fishyback) between nominated domestic coastal ports and Yangshan Port. Then, in December 2014, the COSCO SURABAYA began its first voyage with 895 TEU from Shanghai port to Tianjin port and Qingdao port. The adjustment in the Reply has a valid period however almost fully liberalized in Hainan Free Trade Port (FTP) and without a time limit. This institution is processing from restrictive absolutely to open to specific entities in FTA for a trail and without reservation in FTP now. Therefore, take it on behalf of China's cabotage law that shows this transition is significant and telling.

2.1. Restrictive contents from the beginning

Originally, engagement of coastal shipping is a right which is reserved for ships with the Five-Starred Red Flag meanwhile owned by Chinese invested companies. According to Article 4 of the Maritime Code of the People's Republic of China, it is an exclusive right with the exception: Maritime transport and towage services between the ports of the People's Republic of China shall be undertaken by ships flying the national flag of the People's Republic of China, except as otherwise provided for by laws or administrative rules and regulations. No foreign ships may engage in the maritime transport or towage services between the ports of the People's Republic of China unless permitted by the competent authorities of transport and communications under the State Council.

Apart from the Maritime Code of the People's Republic of China, China's cabotage laws are stipulated by Administrative Provisions on the Operation Qualifications for Domestic Waterway Transport (Hereinafter known as Administrative Provisions) and Regulations of the People's Republic of China on International Maritime Transportation (Hereinafter known as Regulations). Article 22 of Regulations pinpointed that: ...Foreign international shipping operators may not operate the shipping business between Chinese ports, neither may they operate the shipping business between Chinese ports in disguised forms such as using the rented Chinese ships or shipping space, or exchanging the shipping space, etc.

China reserves the right to ships with the Five-Starred Red Flag for coastal transport of goods by sea. Moreover, all ships engaged in the shipping business between Chinese ports must be flying Five-Starred Red Flag. The transportation of goods between the Chinese mainland and Hong Kong or Macao is also stringently restricted. As there are corresponding punishment provisions for infractions.

If the operators operated mentioned business, that is violated the Article 22, they will be punished according to Article 37: “...the party shall be ordered to stop the business operations by the department in charge of transportation under the State Council or the department in charge of transportation under the relevant local people's government; if there exist illegal gains they shall be confiscated; if the illegal gains are not less than 500000 Yuan, a fine of not less than 2 times but not more than 5 times of the illegal gains shall be imposed; if there are no illegal gains or the illegal gains are less than 500000 Yuan, a fine of not less than 200000 Yuan but not more than 1000000 Yuan shall be imposed. If the operator refuses to stop the business operations, the operator will be rejected from entering the port; and the operator's qualification for international liner shipping shall be cancelled if the circumstances are serious.”

China with relatively restrictive cabotage law especially in coastal shipping. And it is processing from “close” to “open”. After going through the stage of strict market management in the period of planned economy, China gradually opened its market to the world marking Economic Reform and Open Up as a turning point. After joining the World Trade Organization in 2001, China's market further and deeper opened to the world. At the end of the 13th five-year plan and the beginning of the 14th five-year plan, under the guidance of President Xi Jinping's “dual circulation” new economic development pattern, all industries have implemented the open development strategy.

2.2. Trail in FTP turn to flexible now

Because Hainan is constructed to be a free trade port, especially its free and openness are emphasized. Law of the People's Republic of China on the Hainan Free Trade Port is promulgated to build the policy and

institutional system of the free trade port in steps and in stages. This is a new attempt at Chinese legislation, due to its aim, it may have something different from the existing laws. Regulation on International Ships in the Hainan Free Trade Port (Hereinafter known as Regulation) is its significant implementation.

Because the nationality of the ships is the core and key factor to the cabotage law, that makes it crucial to take into account. Regulation realized the link between ship registration and ship empowerment. It is the first time that the foreign-invested international ships become legal and eligible to engage in coastal shipping in Hainan province based on Article 30: "Domestic waterway transport operators engage in waterway transport business in coastal waters of the province by using international ships, shall be permitted by the competent authorities of transport and communications of the provincial government. International ships may engage in water construction in coastal waters of the province upon approval".

Furthermore, in detail, more convenient and deeply open and designed to attract registration. First of all, applicants must be qualified to apply for international ship registration for example Chinese citizens legal persons and unincorporated organizations who have a residence in the Hainan Free Trade Port and own or rent the ships for financial leasing and bareboat chartering. Applicants can register at the Administrative Service Center of Hainan Maritime Safety Administration (MSA) or visit the official website.² After completing import procedures, the applicants need to go through the following formalities in the Hainan MSA: Vessel Identification Number, Vessel Name, Call Sign & Maritime Mobile Service Identity Numbers (MMSI) & Marine Radio License; Ownership Registration; Certificate of Nationality & Minimum Safe Manning Certificate and Other Document such as Continuous Synopsis Record & Instrument Endorsement. Applications don't need to submit the instruments issued by the maritime administration. They only need to submit copies of the original documents that can be verified by the government service platforms. For multiple formalities that need to be dealt with simultaneously, they shall be addressed within 2 working days.

Besides, the markets involved in Article 30 of Regulation are more and larger than the Reply. Domestic waterway transportation refers to the operational transportation business in which the departure ports, calling ports and destination ports are all within the waters under the jurisdiction of China. Water construction refers to exploration, excavation, blasting, construction, maintenance and demolition of water and underwater structures or facilities, channel construction, dredging and other operations. This is the first time that China has liberalized the market mentioned above for foreign-invested ships, which is a breakthrough in the existing law and management system. It can't be imagined before or the other places in China.

At the same time, there are favourable policies for registering an international ship in the Hainan FTP. There are three advantages. First, ships assembled in China registered as "China Yangpu Port" and engaged in international transport are eligible for export tax rebates. International ships registered as "China Yangpu Port" are exempt from any import duties, VAT on imports and consumption tax. Second, shipping companies registered in the Hainan Free Trade Port with an operational record are subject to a corporate income tax (CIT) rate of 15 per cent. Income from newly increased overseas investment is exempt from tax. Third, high-calibre and urgently needed shipping professionals who work in Hainan are entitled to a personal income tax (PIT) rate of 15 per cent. International ships that are registered as "China Yangpu Port" in any city or country of Hainan are eligible for zero-tariffs, export tax rebates, refilling of bonded oil and other preferential policies.

3. Impact of this policy on liberal

3.1. Impact on domestic operators

On one side, one of the original aims is to protect the domestic shipping industry when the cabotage law appeared. If this policy continues open to foreign operators, then has the possibility to allow them to engage in the coastal shipping market, it will be a challenge and threat to domestic shipping companies. Domestic waterway transport business in coastal waters is taken exclusively by operators and ships specialized in this business. However, international ships may be engaged now even foreign ships in the future. Thus, current regulations emphasized "owned or indirectly owned by Chinese invested companies" and between Shanghai and selected ports only.

Another side, the shipping companies that would benefit from the Coastal Fishyback policy are large scale, have the strength and own many international ships without the Five-Starred Red Flag. The policy can help them enhance their competitiveness including but not limited to fully utilising the spaces and guiding the customers to change their routes choice. Actually, however, the operators of the shipping market in China mainly consist of small- and medium-sized enterprises. Some of them enjoyed protective cabotage law and undertook coastal transportation business only. Will they survive from mentioned strong competitors who seize the cargo resulting from the cabotage law liberalized? It is an important question that small- and medium-size shipping enterprises are worried about.

² See: <https://www.hn.msa.gov.cn/>

But there is an opposite view and example about the threats to domestic operators through research based on also a state deregulated her coastal shipping. Australia deregulated coastal shipping on 1 February 1995. Although international ship operators have captured about 10–15% of the domestic coastal container market, domestic shipping operators have also seen an increase in their coastal shipping business. This is partly due to an expansion in the New Zealand economy over the last few years, but also due to the continuing trend towards ‘hubbing’, where large international carriers call at one (e.g. Auckland) or fewer ports and then rely on feeder services to carry cargo to and from other parts of the country. (Robert Y. Cavana, 2004) Thus, the economic effect on the domestic shipping industry is evaluated by what kind of indicators and how long the running period must be considered by decision-makers when cabotage law intends to go next step.

Except for economic considerations, involved shipping enterprises should take precautions against possible legal problems. If an accident occurs when international ships moved with cargo between domestic ports in coastal waters, even if its probability is very low, it should be applied to the law of inland water or international transportation that is unclear. It is a real example of the nature of the lag inherent in the law itself. It is hard to identify the subject liability, amount of compensation, application of the law, etc. without regulation and practical experience.

3.2. Impact on domestic ports

Stand at the perspective of ports, China's coastal advanced ports with the advantages of opening up will hope the further liberalized cabotage law without restrictions especially the ports with leading development of container transportation. Because the nationality of the vessel has no adverse impact but may be helpful on the container throughput and other indicators when appraising a port. Enterprises located in the ports of FTA believed that Coastal Fishyback business would attract cargo of transshipment return to FTA to load and unload. Even though this is doubtful. (Chunhui Lin, Yifan Liao, 2004) Therefore, the port will hope and even call on the state to liberalize the cabotage law.

However, the ports pilot the Coastal Fishyback business always big, advanced and with a large amount of throughput. (Shanchun Ye, 2017) Turn the viewpoint to the middle-sized or small ports, and the Siphonage Effect or Matthew Effect may occur. To illustrate it, assume Port A is a big port piloting the Coastal Fishyback business, Port B is a small port adjacent to Port A and Port C is a port that plays the transshipment function all along (e.g. Hong Kong or Busan port). Before Coastal Fishyback approval, the cargo is first transported to Port B and transit at Port C then departure to its destination. Under Coastal Fishyback, the cargo would be delivered to Port A and direct to its destination. On the basis of allowing Coastal Fishyback, it is found that the larger the coefficient of economies of scale the less obvious the effect of economies of scale, and the total cost increases to a certain extent. In the relationship between the total cost and the number of hub ports, when the number of hub ports is 6 or 7, the overall transportation cost of the network will be minimized. Under the condition of allowing Coastal Fishyback, most of the business of Hong Kong and Busan Port, which are now hub ports, will be transferred to Shenzhen port and Shanghai port. (Yi Ding et al., 2015) As a transit port, like Hong Kong, the cabotage-affected throughput could be twice of total transshipment cargo flow (inflow + outflow) that Hong Kong loses. (W. H. Wong et al., 2018) And the carriers may face a similar predicament who operated the coastal shipping business between Port A and Port B only.

One question for ports of China also for shipping enterprises (not only domestic but also foreign) is whether to change the base ports and direct routes or not when shipping routes are designed. Whether shipping enterprises will adjust or even decrease the direct routes between international ports and ports adjacent to the ports allowing Coastal Fishyback, is a derivative of the above problem. Maybe this question is a little far from now, however, the possible forward-looking issues should be considered. Because the policy change of cabotage law has a large impact on the shipping industry. The shipping industry as one of the pillar industries of the Chinese economy plays a virtual role in China from a large shipping country becomes a strong maritime country.

3.3. Impact on foreign operators

Maersk on behalf of foreign operators closely follow this policy and actively communicate with the government and authorities in charge, aiming to expand it. Because if they can engage in such coastal shipping the transport efficiency could be greatly improved. (Daojun Wang, 2015)

Foreign shipping carriers use the Protocol when China accessed in WTO as the support to call on liberalizing the coastal shipping market. However, China reserved this field in that file so it is not strong.³ (Annex 1) Foreign operators may raise their opinion to access the coastal shipping market based on WTO rules framework like non-

³ See: STATE COUNCIL GAZETTE: State Council Gazette Supplement, Jan 26, 2002, Protocol on the Accession of the People's Republic of China: Annex 9: Schedule of Specific Commitments on Services List of Article II MFN Exemptions:11. TRANSPORT SERVICES.

discrimination principle since the Coastal Fishyback policy was issued. But this reservation is unable to argue to be discrimination. Nevertheless, Regulation is backing their call in some sense. Foreign operators may benefit from Regulation access to the domestic waterway market in Hainan by registering their ships as “China Yangpu Port”. And they should pay more and close attention to the situation and trends in the Reply. Because the next step of this policy would influence the foreign operators or the ships without China's nationality a lot.

4. Tendency of policy development in the future

4.1. *The potential component of cabotage law without restriction*

Except for the above first major aspect, the second important field that needs to pay attention to is the crew. Because the shipping industry is a labour-sensitive industry and China has relatively cheap and adequate labour resources as all known. And reserving job opportunities for nationals is also one of the policy objectives of cabotage law. But under this circumstance, we cannot find laws or regulations to protect it.

Strictly speaking, it is hard to say there is a stringent restriction on crew allocation in the cabotage law of China. There is no regulation that restricts the crew engaged in cabotage activities must Chinese citizens except Article 8 of Regulation of the People's Republic of China on Seamen. Article 8 stipulated that the post of master of a ship of Chinese nationality shall be assumed by a Chinese seaman. Besides, there is no restriction stipulated in the law. Judging from this, anyone with a qualified certificate can be employed. Moreover, development in the southwest of China may provide an opportunity for foreign workforce inflow to China's labour market.

Take Guangxi province as an example, it has ports for international ships and also has important stations for trains to connect inland western China. Furthermore, it involves in not only one crucial strategy including the Silk Road Economic Belt and the 21st-Century Maritime Silk Road Initiative, joint construction of Guangdong-Hong Kong-Macao Greater Bay Area and the Regional Comprehensive Economic Partnership (RCEP) agreement. Many countries adjacent to Guangxi also include big seafarers providing country, such as the Philippines. Besides, the labour cost of China no longer has the big advantage as before. So, with the communication and movement increasing under mentioned strategies towards abroad the foreign seafarers may take more share of the seafarer labour market of China.

The forward sign of this aspect also can be found in Regulation. Foreign enterprises and individuals may set up or jointly set up crew training institutions in accordance with relevant regulations in Hainan Free Trade Port to engage in the crew training business. The approved crew training programs prescribed by the state by Hainan maritime administrative authority are set up. Foreign individuals who have participated in the crew training programs prescribed by the state in Hainan Free Trade Port and passed the examination may apply for the corresponding crew competency certificate and training qualification certificate in accordance with relevant regulations. Foreign crew members and their families holding work certificates and working on international ships shall enter Hainan in accordance with relevant laws, regulations and work requirements.⁴

4.2. *View and suggestion to the formation of further policy on cabotage law*

Based on the report on cabotage law of the world, the scope of activities covered by cabotage is broad including trade or transportation of goods and passengers mainly; and other activities, such as port and coastal services, traction, rescue, lighting, tugs, traffic boats, exploration, mining of ores or other non-living natural resources, the assistance of icebreakers, search, salvage of marine property, hydraulic engineering, underwater engineering and other similar projects. However, the definition and regulation of cabotage law in China don't have so much meaning. This implies a liberalized market for cabotage activities can be irrelevant to trade. In other words, the policy could liberalize the maritime shipping market only. From the Reply and the Regulation for Hainan, we can find that the stage of openness that China's cabotage law stepped into may a transition from restrictive to flexible. At least, the government liberalized it in Hainan FTP and expect to see a positive outcome and effect.

But compared with other strong maritime and shipping states, China has opened more markets than others. Whether continue, expand and promote these measurements and regulations to other ports of China or not? This may be a tough question for decision-makers. The Reply has another point that should be paid attention to what is the valid period will end up on Dec 31, 2024. That means it is a temporary adjustment to show a cautious attitude toward cabotage law. Moreover, it is still at the stage of the beginning of China's cabotage law turns from restrictive to flexible.

Through this research, we can find that everything is just at the beginning. It has not been verified for a period of time. There is no achievement now and no standard or indicators to evaluate the effect of this change. The suggestion would be to maintain the current circumstance for a period of time to collect data and determine evaluation indicators. To appraise the effect comprehensively then decide on the next step. The current process is a premature advance to some degree.

⁴ See: Chapter 3 of Regulation on International Ships in the Hainan Free Trade Port.

Even more than this, the one holds the disagreed opinion whose main reasons are about national safety which is one of the policy objectives. Here, it is considered that the policy objectives can be used as the primary indicator corresponding to the implementation effect to assist make a decision. How the policy develops depends on the objectives it intends to achieve. If they don't want to achieve a certain objective, they don't need to formulate corresponding policies. According to a report released by SRI, policy objectives of cabotage law of the world are summarized in several kinds. Mostly, maintaining national security and defence capabilities through national merchant fleets and promoting fair competition and preventing illegitimate competition lies firstly in most states with cabotage laws. (SRI, 2018)

There is an argument about this policy objective. It is based on two premises. First, foreign vessels that are not eligible to engage in activities within the coastal waters are not necessarily prohibited from traversing the coastal waters while they are undertaking international voyages. Second, it is not objective to suggest that threats to national security from the coastal waters can only be carried out by foreign entities. (Aniekan Akpan, 2018) It implies that if there really exist risks or threats, that cannot be prevented or declined by prohibited foreign vessels from activities in coastal waters. This is because the era has changed and national security should more refer to economic security these days. For example, it may play a role in preventing smuggling to some extent.

In view of market working, China has sufficient transport capacity so it is unnecessary to open its market for foreign operators accessing in to satisfy the unfilled demand. This also reflects other policy objectives of cabotage law: providing necessary public services where transport services(by land or sea) would be inadequate if left to foreign market forces and especially ensuring principles of universality equality, continuity, regularity and price accessibility; increasing ships on the national register and/or promoting ship ownership, shipbuilding and ship supply services; promoting seaworthiness, safety of ships and life at sea and the security of ships and ports.

Furthermore, China has an adequate and relative low-cost labour force. To guarantee employment, crew allocation is reserved for nationals. Cabotage law also aims to develop human capacity and retain skills in the national workforce and/or promote the transfer of maritime knowledge and technology to nationals and create jobs for nationals.

Additionally, environmental protection has gained more attention than before. China pledged to the world in 2020 that it will peak carbon dioxide emissions before 2030 and strive to be carbon neutral by 2060. Taking this factor into consideration, under the “double carbon”, encouraging transportation by sea instead of transportation by other ore polluting and expensive transportation modes; meanwhile enhancing marine environmental protection and compliance with conventions relating to the prevention of marine pollution.

Finally, in any case, either Reply or Regulation shows the cabotage law of China is not so restrictive and protectionist as before in previous research. The policies and regulations transition need appraisal comprehensively with economic, social, political, etc. indicators to avoid something radical. However, the openness principle will not change so as the expectation of prosperity and development together.

Conflict of Interest

The authors declare no conflict of interest.

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