CLIENT ALERTS & INSIGHTS

A Primer on U.S. Non-Continuous Domestic Trade

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The U.S. inland waterway system is a critical and underutilized component of the domestic supply chain that serves intrastate commerce and non-contiguous markets originating in or destined for Alaska, Hawaii, and U.S. territories and possessions. Service providers and shippers in the domestic trade of the U.S., which includes ocean and water carriers, barge operators, and inland waterway providers, can offer and seek cost-effective scalable alternatives to traditional surface and air modes that connect these regions to the U.S. mainland.

Non-contiguous domestic trade involves a legal and operational framework that is complex and shaped by multi-agency oversight, legacy statutes, and evolving operational realities that involve the Surface Transportation Board (STB), the U.S. Army Corps of Engineers (USACE), and the Maritime Administration (MARAD). To navigate these complexities, market participants will benefit from an understanding of the interplay between these legal, regulatory, and operational schemes, as this is a pathway for shippers and service providers to diversify domestic supply chains and expand capacity to strengthen operational resilience, particularly when other modes experience headwinds such as service disruptions.

STB Jurisdiction

The STB has jurisdiction over waterborne transportation in the non-contiguous domestic trade of the U.S., even if a particular shipment moves through international waters. [49 U.S.C. § 13521.] Stakeholders may see this as a benign authority, but recent STB rulemaking activity suggests there is a broader regulatory structure on the horizon. The agency's 2019 rulemaking requires electronic tariff publication, and annual certification under 49 U.S.C. §§ 13701-02 signals a similar trend toward digitization as seen with other regulatory agencies, the impact of which has clear compliance implications for shippers and service providers.

STB Compliance: Tariffs

Legal compliance in waterborne transportation hinges on the tariff publication requirement. Pursuant to 46 CFR § 1312.3(a), all published tariffs for services subject to the jurisdiction of the STB must: (i) be filed in English; (ii) include an accurate description of the services offered to the public; (iii) provide the specific applicable rates explicitly stated in USD and service terms; and (iv) be arranged in a way that allows for the determination of the exact rates and service terms applicable to a particular shipment. Carriers can perform services in the non-contiguous domestic trade only if their rates and related rules and practices for such services are made publicly available on their websites or on a third-party vendor hosting site, which must also be kept on file with the STB. [46 CFR § 1312.2(a).] The only stated exception to the publication requirement is if a carrier provides transport for charitable purposes.

Carriers that fail to comply with the tariff publication (and amendment) requirements, even if there is an intermodal component for a particular movement, create the potential for agency enforcement, which can include suspension or revocation of operating authority. With the increasing digitized compliance obligations of federal agencies, as well as the STB's enforcement trends, market participants should consider implementing internal procedures that address proactive tariff governance and maintain digital-audit readiness.

Areas for Commercial Growth and Infrastructure Development

The Fixing America's Surface Transportation Act (FAST) and the Water Resources Development Act (WRDA) serve as foundational policy tools the STB considers to build out and promote inland water operations and infrastructure, development, and investment. In 2017, the FAST Act accelerated long-delayed lock-and-dam modernization projects, and the 2024 WRDA update reinforced federal support for channel maintenance, port dredging, and equipment upgrades. Carriers are only beginning to leverage programs that are spearheaded through these Acts to structure proposals that meet eligibility requirements, long-term network efficiencies, and commercial return on investment thresholds.

The U.S. Marine Highway Program (USMHP), which is administered by MARAD, is a federal-backed initiative promoting barge and short-sea shipping as a congestion-mitigation tool. Carriers that have tapped into USMHP grants have seen operational improvements, including:

- Port Decongestion: Inland ports established in Savannah, GA, and Oakland, CA, during congestion spikes illustrate the viability of a barge-supported network that can provide relief.
- Labor Disruption Resilience: During the 2024 port labor strikes, barge operators served as essential lift providers for diverted cargo to service the flow of automotive parts and time-sensitive agricultural goods.
- Sustainability Metrics: Environmental, social, and governance (ESG) requirements continue to drive shipper interest in water-based alternatives (e.g., a 15-barge tow can displace more than 1,000 trucks on the road, which reduces Scope-3 emissions and supports corporate carbon reporting benchmarks).

Carriers' participation in USMHP initiatives enhance operational resilience, which adds commercial value for their shippers. However, the U.S. inland waterway system is structurally and environmentally challenged, which presents certain barriers to entry, including:

- Aging Infrastructure: Downtime and delays are a threat, so monitoring for USACE-scheduled maintenance should be considered when contracting to build in delay clauses and avoid performance disputes.
- Environmental Compliance: Carriers are increasingly subject to environmental regulations implemented by the Environmental Protection Agency (EPA), the Customs Border Patrol (CBP), and even state-level rules, such as ballast water treatment and fuel standards.

- Competitive Modal Dynamics: Barges dominate bulk movements such as grain, coal, petroleum, iron ore, etc., but competitive pricing and market pressures periodically shift volumes to rail carriers and motor carriers. Emerging services such as Container-on-Barge (COB) offer an opportunity to capture high-value time-sensitive cargo, but there are practical considerations and risks, such as terminal handoffs, liability thresholds, and container ownership, that demand a tailored service agreement for COB operations.

Conclusion

Navigating non-contiguous domestic trade demands an integrated legal and operational strategy that accounts for ocean, barge, and inland waterway transportation under overlapping regulatory regimes. Shippers and service providers that consider the use of waterborne transportation, in addition to surface, rail, and air transport, are best positioned to mitigate those risks that can arise when there are disruptions and downturns in the market or other issues impacting domestic supply chains. As the STB's regulatory landscape continues to evolve, proactive planning will be critical to ensure long-term resilience and commercial success in this underutilized segment of the U.S. supply chain.

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