



25 April 2025

Update on USTR US to implement substantial fees on vessels calling at US ports

On 21 February 2025, the Office of the United States Trade Representative ("USTR") published its proposals to address what it considers the harm to the US incurred as a result of China's support to the maritime, logistics and shipbuilding sectors. These proposals include the imposition of significant additional fees on Chinese-owned, -operated and/or -built vessels calling at US ports.

On 17 April, the USTR issued a detailed Notice of Action and Proposed Action (the "**Notice**"). The new proposals differ significantly from the original proposals, albeit there still remains some uncertainty as to the scope and implementation of the proposals.

USTR Proposals

The Notice takes effect from the date it was issued but the fees are set at US\$ 0 for the first 180 days. The key aspects of the proposals in the Notice are for the imposition of "service fees" from 14 October 2025 onwards, as follows:

1. On Chinese vessel owners and operators calling at U.S. ports based on net tonnage, in the amount of US\$ 50 per net ton per voyage (up to a maximum of five times per

year per vessel), increasing by US\$ 30 per year for the following three years.

2. On Chinese-built vessels that are not Chinese-owned or controlled calling at U.S. ports, at the higher of US\$ 18 per net ton or US\$ 120 per discharged container, increasing by US\$ 5 per net ton per year for the following three years, with container fees increasing to US \$250 per container by 2028.
3. On non-U.S.-built vehicle carriers calling at U.S. ports, at US\$150 per Car Equivalent Unit.

The following exemptions apply to the above service fees , namely:

1. All Liquefied Natural Gas ("**LNG**") carrier vessels (though noting LNG exports will be the subject of separate restrictions).
2. U.S.-owned vessels (which refers to vessels owned by U.S. entities controlled by U.S. persons and at least 75% beneficially owned by U.S. persons).
3. Vessels arriving at U.S. ports empty or in ballast.



4. Small and medium-size vessels (which are vessels with a capacity of equal to or less than 4,000 twenty-foot equivalent units, 55,000 DWT, or individual bulk capacity of 80,000 DWT);
5. Vessels operating in short sea shipping (considered to be a voyage from a foreign port or point less than 2,000 nautical miles from the U.S. port in the continental U.S. in question).
6. Specialised chemical tanker vessels.
7. Vessels enrolled in particular U.S. Maritime Administration sealift and security programs.

Additional duties will be imposed on cranes manufactured, assembled or made from components of Chinese origin of up to 100%, and on certain other cargo handling equipment from China of between 20-100%.

From 17 April 2028 onwards, 1% of LNG exported from the U.S. must be exported by a U.S.-flagged and U.S.-operated vessel, which percentage increases to 15% by 2047.

In addition, if a vessel owner of a vessel which is the subject to these fees orders and takes delivery of a U.S.-built vessel of equivalent or greater net tonnage, then applicable fees on the non-U.S.-built vessel may be suspended for a period of not more than three years.

Key Changes from the Original Proposals

The Notice adapted the USTR's original proposals in several significant ways:

1. Vessels will be charged additional fees per voyage rather than per U.S. port of call, and up to a maximum of five voyages per year. This addresses concerns that smaller U.S. ports would suffer if vessels prioritised calling at major ports to reduce fees.
2. The fees for Chinese vessel owners and operators are based on tonnage rather than a flat fee of US\$ 1 million (in addition to small and medium-sized vessels being exempt). This change will benefit owners and operators of smaller vessels, but will ultimately lead to a greater fee on large vessels than if the flat fee had been adopted.
3. No fees will be imposed based on fleet composition and therefore non-Chinese fleet owners with Chinese-built vessels will not be affected.
4. Some clarity has been provided on how to determine if an owner or operator is "Chinese" for the purpose of the Notice.
5. Fees are also imposed on the operators of non-Chinese-built vehicle carriers if they are not U.S.-built. It is unclear how the imposition of these fees is intended to combat the dominance of the Chinese ship-building industry and this may be the subject of further debate from non-Chinese operators.
6. Restrictions on the carriage of U.S. export to U.S.-flagged and U.S.-built ships are now limited to LNG cargo and will not be imposed until 2028.

The Notice has addressed several of the questions raised further to the original proposal, but certain clarifications are still required, including:

1. Who is an "owner" or an "operator"? The Notice cross-references the terms "owner" and "operator" to CBP Form 1300 but that form does not expressly define those terms. Uncertainty therefore remains as to the precise meaning of those terms. In particular, it is unclear what the status of lease-finance title holders to vessels or bareboat charterers or who is an "operator" where there are multiple potential "operators" e.g. ship managers and charterers.
2. Who will qualify as a U.S.-vessel owner? The Notice specifies that a U.S.-owned vessel is one where the US entity owning the vessel is controlled by U.S. persons and is at least 75 percent beneficially owned by U.S. persons. It does not specify who is considered to be a "U.S. person" or how beneficial ownership is determined.



3. How and when will such fees be collected? Which authority will be responsible for collecting the fees? The Notice only provides that payment "may be made using existing government methods to the extent possible, as determined by the CBP".

4. Will fees be imposed if goods onboard the Chinese-built or -owned vessel are not being discharged at any U.S. port or if a vessel calls at a U.S. port only for the purpose of repairs, weather-related issues, etc?

5. For LNG operators, whilst restrictions will only apply after 18 April 2028, it is unclear who will monitor/impose the restrictions.

These issues, and others, will need to be clarified before any regulation can be drawn up which imposes these proposals on Chinese-owned/-operated tonnage.

Industry Impact

The Notice remains subject to further commentary until 8 May 2025, following which a public hearing will be held on 19 May 2025, with rebuttal comments following the hearing to be submitted within seven calendar days of the final day of the hearing. It is clear however that proposals will be implemented and that these will have a far-reaching impact on the shipping industry.

For current charterparties:

1. For voyage charters, these port costs are likely to be for Owners' account (and therefore built into the freight) unless there is an express provision which permits this cost to be passed on to Charterers.

2. For time charters, the obligation is likely to be on Charterers. Standard forms such as the NYPE 1993 and BOXTIME 2004 require Charterers to pay port charges in most circumstances. Unless there is an express clause to the contrary, this cost will therefore be for Charterers (albeit there is some ambiguity as to whether the "service fee" will fall within the definition of a port charge). As to whether Charterers could pass this cost on to Owners, there is no mechanism in a standard charterparty for them to do so (though this is subject to express language in additional terms to the charter).

3. For standard form voyage or time charters, it is unlikely that standard terms will include termination provisions on which the parties could rely in these circumstances nor is it likely that parties would be able to terminate a charter if the proposed fees are imposed as a matter of English common law. However, charter-specific terms may impact the steps parties could take in response to the imposition of the proposed fees, in particular force majeure / exclusion clauses, material adverse change clauses, clauses relating to changes in law, and clauses specifically related to port tariffs and/or sanctions. Such terms would need to be assessed on an individual basis.

For future charterparties, affected carriers may revise their freight rates to account for the additional port fees and/or revise the trading restrictions for their vessels, such that they do not trade to the U.S. at all (which may not be commercially viable) or trade to the U.S. less (i.e. by removing the number of voyages to the U.S. and considering alternatives such as Canadian ports). Charterers may seek to negotiate time charter terms to avoid paying additional port fees and this will need to be the subject of negotiation, for example by Owners agreeing to take on the costs but in exchange Charterers will limit the number of voyages to the U.S.. There may be other options available depending on the precise terms of the regulation.

How can we help?

The global maritime team at Stephenson Harwood are currently assisting a number of clients in reviewing their contracts and drafting provisions to address the proposed changes and are on hand to assist with any queries in relation to this development.



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