

By Jeff Tucker

A Fuel Surcharge Witch Hunt

A dangerous piece of legislation, the TRUCC Act, was introduced last month at the behest of a sole special interest group, the Owner-Operator Independent Drivers Association. The ostensible motivation behind the act is to help “the little guy” who is paying out of pocket for fuel.

First, let’s be clear that any benefit from such legislation would not flow to any owner-operator. In fact, other than the plaintiffs’ lawyers and OOIDA itself, which would be handed a more fertile hunting ground for targeting “deep pockets,” it’s hard to imagine anyone benefiting from the proposed legislation.

The American Trucking Associations opposes this act, as does the Truckload Carriers Association and the National Association of Small Trucking Companies. A number of shipper and third-party logistics groups oppose it, including the National Industrial Transportation League, NASSTRAC and the Transportation Intermediaries Association. The U.S. Chamber of Commerce and the National Association of Manufacturers oppose it. These groups quickly galvanized in opposition to this witch-hunt legislation that would re-regulate pricing in the trucking industry and ignite countless class-action lawsuits.

No shipper, carrier or broker controls the market, despite OOIDA’s claims otherwise. To presume that the rules of supply and demand should not govern trucking, as they do in every other market, is pure folly.

The reality is, if this act passes, it could deal a death blow to many owner-operators. How? Market participants usually react rationally to avoid risk and liability. If the TRUCC Act passes, shippers and brokers will likely begin to shift more of their freight to motor carriers who employ only company drivers. Why? No shipper or broker would wish to be trapped in a fishing expedition class-action lawsuit where an owner-operator alleges certain abuses against its carrier partner or a broker. The only way of proof would be to sue all parties in the entire supply chain for “discovery,” and that could take months or years and thousands of legal dollars to defend.

Some other reasons why this legislation is dangerous:

Market forces — supply of trucks vs. demand for goods to be moved — dictate prices, period.

If a fuel surcharge is made mandatory, the market will force up

or down other elements of price, such as linehaul rates, to a level according to the dictates of supply and demand.

Shippers, brokers and carriers do pay for additional fuel costs, or the freight simply wouldn’t move. It is as simple as that.

Shippers, brokers and carriers negotiate their own prices with one another, as in any market. Parties reach agreements based on their own cost needs. Nobody is ever forced to take a shipment.

Tools already exist to collect on unfulfilled contracts: collection agents, small claims courts, right of review.

These claims that surcharges are not being passed through are absurd. In fact, the average margin per transaction of most brokerage firms has substantially declined in the past two years, due to the weak tonnage related to industrial output, caused by the housing and automotive industry meltdowns, which follow the trucking industry’s large equipment buy.

So how is it that brokers and logistics firms are profiting off the fuel?

Let’s not forget that owner-operators and carriers had a stronger hand than brokers and shippers during the robust 2003-2005 economy, despite rising fuel, because of a driver shortage and an abundance of freight.

This act would erase 28 years of deregulation in trucking, reintroducing significant regulation for the first time since 1980, adding significant legal and administrative cost to an already stressed industry.

Trucking is “business to business” and the issue is unrelated to consumer or highway safety, so why is Congress involved?

Brokers don’t only match carriers to shipments; they manage inventories, vendors, information flows, warehouses, etc. “Commissions” represent all these value-added services and improve American industrial output and provide opportunity for owner-operators they otherwise would not have.

There are urgent transportation matters facing the nation today. Washington has a responsibility to focus resources on highway safety, infrastructure investment, a sound energy policy and long-term solutions to rising fuel prices.

It is important that Congress resists unwarranted interference with industry market mechanics without broad-based support from those who are knowledgeable and involved in working to improve the industry.

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