Container Transport Alliance Australia
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11th February 2022

Australia's Maritime Logistics System Inquiry
Productivity Commission
Locked Bag 2, Collins St East
Melbourne Vic 8003

Dear Sir / Madam,

Re: Australian Maritime Logistics System Inquiry

Container Transport Alliance Australia (CTAA) welcomes the opportunity to make this submission to the Commission's Inquiry into Australia's Maritime Logistics System and associated supply chains.

CTAA alliance companies also welcomed the opportunity for a preliminary online consultation with Commissioners and staff on Monday, 30th January 2022 to discuss aspects of the issues dealt with in our submission below.

Container Transport Alliance Australia (CTAA) is a strong alliance of companies engaged in the container transport logistics sector across Australia. CTAA alliance companies are responsible for the majority of the landside movements (road & rail) of Australia's international container logistics task through Australia's major capital city container ports.

CTAA Alliance companies are involved in road and rail transport, empty container park operations, container pack/unpack, warehousing, quarantine services and other ancillary services related to the movement and handling of Australia's vital international container freight supply chains.

It is noted that the Inquiry is designed to focus on long-term trends, broad economic impact and operational cost drivers, including industrial relations, infrastructure constraints and technology uptake in Australia's ports and related transport networks.

We note too that the inquiry will be assessing the overall competitiveness of Australia's ports and will look at market power and economic regulation.

The Commission is looking for, in particular:

- evidence on ways the system performs well and less well.

- answers to the following questions:

  - If the system is underperforming, what needs to change and why?
  - How and why would any changes lift performance, and by how much?
  - Who needs to do what to make those changes happen?
  - What should governments do? And what should the private sector do?

CTAA's Alliance companies are most interested in current and future landside logistics productivity, efficiency and cost effectiveness. Therefore, this submission concentrates specifically landside logistics interface issues – between transport operators and container terminals; between transport operators and empty container depots; and between transport operators, shippers (importers / exporters), and other important landside stakeholders.

CTAA has left commentary on the broader impact of the current disruptions to global supply chains to other representative colleagues of shippers (importers & exporters) and freight forwarders.

This submission addresses the following broad issue headings:

- Framework to improve the measurement of container logistics chain performance
- Impediments in the landside logistics interface with container terminals, and the structure of landside access and ancillary fees – what productivity offsets?
- Empty container management issues - "reasonableness" of container detention policies and practices imposed by shipping lines
- Workforce and labour supply impediments
- Need for container shipping and logistics to be classed as an "essential service" with supply chain continuity protections enshrined in law.

Framework to improve the measurement of container logistics chain performance

The measurement of container logistics chain performance across all of Australia's capital city ports is not standardised or consistent.

In all of Australia's capital city ports, except in Fremantle, State Governments have stepped back from direct involvement in the operation of container ports through privatisation.

It's highly important that all jurisdictions develop improved, independent measurement indicators of container logistics chain performance in each Port.

These performance indicators relate to the commercial / physical logistics interfaces rather than to the regulation of port access & pricing of the privatised port managers (through essential services economic regulation).

You can't improve what you don't measure and its vital that all stakeholders, including Governments, have a clearer understanding of whether productivity and efficiency in Australia's container ports is improving, declining, or remaining stagnant.

Container ports are vital economic infrastructure assets for the State in which they reside and for the nation – despite port privatisation, Governments should have a clearer role in monitoring the performance of those assets, particularly as trade volumes grow.

NSW:

NSW has a mature container logistics chain performance measurement process due to the NSW Ports and Maritime Administration Act, and its associated Port Botany Landside Improvement Strategy (PBLIS) mandatory standards regulating the road transport / container stevedore terminals' interface at Port Botany.

PBLIS was introduced in 2010 to improve efficiency and productivity of container movements at Port Botany, by regulating the performance of road carriers and stevedores.

Arguably, PBLIS has been successful in improving the road transport interface with the three international container terminals at Port Botany, leading to a relatively consistent truck turnaround time (TTT).

PBLIS has also balanced to a degree the disproportionate "market power" of the stevedore companies by imposing financial penalties for poor terminal performance that delays road transport operators unduly or for non-service events. In addition, it regulates the imposition of financial penalties on transport operators for poor arrival performance and "no shows".

The NSW Cargo Movement Coordination Centre within Transport for NSW (TfNSW) independently measures the Port Botany road transport / container terminal interface and calculates associated non-performance penalties using the Cargo Efficiency Operations System (CEOS). CEOS integrates stevedore data with truck and train tracking data to provide an independent & comprehensive record of operations of the landside interface in Port Botany.

In May 2020, the NSW Empty Container Supply Chain Study was released, finding that current inefficiencies in the NSW empty container supply chain result in an estimated additional cost of $49 million per year, potentially escalating to $100 million per year by 2040 if the inefficiencies are not addressed.

This report has led to cooperative efforts by industry and the NSW Government, facilitated by TfNSW, to establish key performance indicators for the NSW empty container management chain and to begin to address the inefficiencies.

The NSW Government is currently conducting an independent review of the NSW *Ports and Maritime Administration Act 1995* (PAMA Act) and its associated Port Botany Landside Improvement Strategy (PBLIS) mandatory standards regulated under the Act. Open for discussion will be whether the PBLIS mandatory standards should be extended to the rail freight interface at Port Botany, as well as to empty container management performance associated with the Port.

The PAMA Act has already been revised to allow the NSW Minister for Transport to compel stevedores and empty container park operators to provide data on empty container management.

The Current PAMA Act & PBLIS Review is important, because despite the success of the PBLIS mandatory standards in balancing market power forces between industry participants, key indicators point to a decline in the performance of the road transport / container terminal interface.

For instance, the import measure of average Truck Turnaround Times (TTT) within the container terminals in Port Botany has deteriorated from 16.3 minutes in March 2016 to 22.4 minutes in December 2021, with a peak of 28.6 minutes in October 2021.

Also, while on-time truck arrival has been relatively steady between March 2016 (96.9%) to December 2021 (94.6%), on-time servicing of trucks within the Port Botany container terminals have deteriorated from 94.8% in March 2016 to 86.6% in December 2021.

See: https://www.transport.nsw.gov.au/data-and-research/freight-data/freight-performance-dashboard/port-botany

The deterioration in container terminal landside performance in Port Botany is worrying, set against the ever-increasing landside access fees and vehicle booking related fees, the revenue from which should be funnelled into productivity improvement measures rather than simply replacing revenue lost by the stevedores through their shipping line contracts (see next section).

Victoria:

CTAA has keenly encouraged the Victorian Government to develop and measure container logistics chain performance indicators consistent with the measurements in NSW and those collected by the Federal Bureau of Infrastructure, Transport & Regional Economics (BITRE) through its “Waterline” series.

The Victorian Voluntary Performance Monitoring Framework (VPMF) is evolving and is being extended to measure empty container indicators as well. This follows the release of the Victorian Empty Container Supply Chain Strategic Review Report in September 2021.

However, unlike the performance data collected in NSW, the Victorian VPMF:

- Does not measure landside performance independently (through an equivalent system to the NSW CEOS data collection) – it relies solely on data obtained from the container stevedores.

  In some instances this skews the data as the container terminal operators measure Truck Turnaround Times (TTT) from “gate in” to “job complete” rather than taking account of any queuing delays before the terminal gate, or any delays exiting the terminal.

- Does not present the data in a monthly, time-series format

- Is not accompanied by any regulation of poor terminal performance, or any corresponding financial recompense to container transport operators for poor terminal performance.

Queensland, South Australia and Western Australia:

The Queensland Government has no formal mechanism equivalent to the NSW or Victorian performance measurement regimes. It’s important that this is developed in Queensland as there are container logistics chain interface implements in the Port of Brisbane like those experienced in NSW and Victoria which need to be monitored and addressed. This includes episodes or poor Truck Turnaround Times (TTT) and excessive truck queuing delays.

South Australia is unique, in that it’s container terminal in Adelaide is owned and operated by the privatised port manager entity Flinders Ports. The SA Government has little involvement in independent monitoring of the performance of the container logistics task at the Port of Adelaide.

The Port of Fremantle is still owned and operated through a WA Government statutory authority, Fremantle Ports. The WA Government and Fremantle Ports have mechanisms to monitor and influence container logistics chain performance, and share performance indicators with industry stakeholders (i.e. through the Freight & Logistics Council of WA, and WA Port Operations Taskforce).

Recommendations:

1. **National & State/Territory Governments, through the Infrastructure and Transport Ministers’ Meeting (ITMM) regime, develop consistent, independent performance indicators for the landside interface (road and rail) with container stevedore terminals in each capital city port in Australia, as well as for corresponding empty container management chains.**

2. **Consideration be given to the consistent implementation of technology tools that support independent verification of the container logistics performance indicators, including:**

- ✓ **Automated Number-Plate Recognition (ANPR) camera technology;**
- ✓ **Seamless electronic data exchange between stakeholders; and**
- ✓ **Automated reporting systems**

Impediments in the landside logistics interface with container terminals, and the structure of landside access and ancillary fees – what productivity offsets?:

The road (and rail) landside interfaces with container stevedore terminals present many challenges, such as:

- Reliable and efficient truck (and rail) turnaround times (TTT) and container turn times (CTT)
- Vehicle Booking System (VBS) slot availability (import and export) across terminal operating zones to meet volume demand

At the time that a truck (or train) must enter a container terminal to transact import container pick-ups or export container deliveries (including the return of an empty containers to container terminals directly as deemed by shipping lines), the container terminal is a "monopoly".

The interface is governed by "standard form" Carrier Access Agreements (terms & conditions of terminal entry) that are imposed on transport operators by the stevedores on a "take it or leave it" basis:

See:

- DP World Australia (DPWA) – National Terminal Carrier Access Terms and Conditions
- Patrick Terminals – National Terminal Access Terms & Conditions
- Hutchison Ports Australia – Terminal Carrier Access Terms and Conditions
- Victoria International Container Terminal (VICT) – Carrier Access Agreement
- Flinders Adelaide Container Terminal (FACT) Vehicle Booking System Rules

These Carrier Access terms and conditions dictate the penalties to be paid to the container terminals for non-performance by transport operators (i.e. financial penalties for not turning up to a slot booking on time or being a "no-show"). However, there is no corresponding regime of financial compensation to transport operators for poor terminal operational performance (except in NSW under PBLIS)

Similarly, landside productivity is hampered by:

- Container terminal access rules that diminish opportunities for "two-way" utilisation of trucks, leading to one-way empty running and additional trucks on public roads for the given freight task

- Limited visibility of slot allocations by stevedore terminal operators to meet forecast demand

- Deteriorating Truck Turnaround Time (TTT) performance and Container Turn Time (CTT) Performance – the latter being a measure of the time taken by the terminal to service the landside vehicle with a container.

  CTT is perhaps a better measure of terminal landside performance as TTT will vary depending on the size of the road transport vehicle - i.e. semi-trailer exchanging between two to four TEUs in one terminal visit vs. a high productivity freight vehicle such as a Super B-double or A-double exchanging between four to eight TEUs in one visit.

As recorded in container terminal productivity statistics compiled by the Bureau of Infrastructure, Transport & Regional Economics (BITRE) in its *Waterline 67* Report (22 December 2021), the "Five Ports" average percentage of trucks backloaded from the container terminals in Melbourne, Sydney, Brisbane, Adelaide and Fremantle in the period July – December 2020 was just 11.7%.

The worst performing port for truck backloading was Sydney (Port Botany) at just 5.7%, while the best performing was Adelaide with 22.9%.

Likewise, when studying the productivity measure of the number of Twenty-Foot Equivalent Units (TEU) carried per truck visit to container terminals, the average number has only increased marginally from 2.5 TEUs in the July to December period of 2018 to 2.6 TEUs in July to December 2020.

Exploring regulatory and operational opportunities to improve truck utilisation rates into / out of container terminals across Australia would drive down road transport operating costs.

There is certainly a lot of room for improvement.

Terminal Access Fees and Vehicle Booking System (VBS) Fees and Ancillary Charges – What Productivity Offsets?:

The ACCC's Container Stevedoring Monitoring Report 2020-21 (October 2021) provides a succinct analysis of the commercial dynamics driving a "re-balancing" of revenue generation by the container stevedores away from their traditional shipping line customers, due to greater container terminal competition on Australia's east coast and the greater bargaining power of shipping lines), and towards landside transport operators.

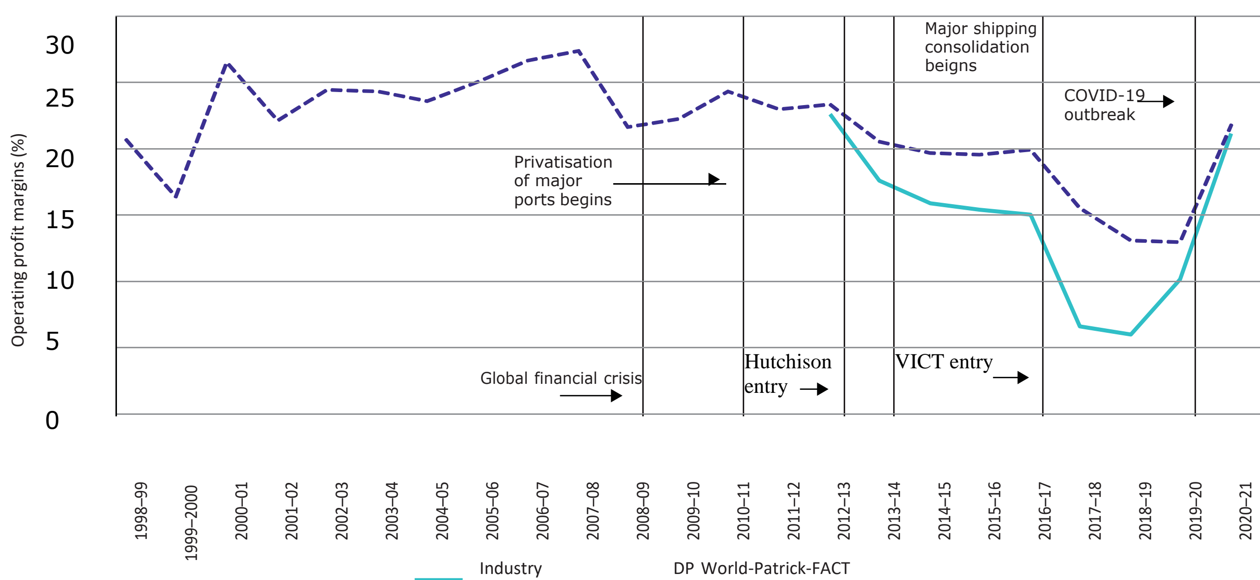
As the figure below illustrates (*ACCC Container Stevedoring Monitoring Report 2020-21, page 36*), in the period between 2012–13 and 2019–20, the aggregate operating profit of incumbent stevedores (DP World, Patrick and FACT) fell significantly, dropping to 12.7% by 2019–20.

Both Hutchison and VICT incurred substantial losses during their initial start-up period. Because of this, the aggregate operating profit of all 5 stevedores fell even more, reaching 5.8% in 2018-19. The existing stevedores (Patrick, DP World and FACT) displayed less of a downturn in profit margins, dipping to and average of 12.7% in 2018-19 prior to the COVID-19 pandemic.

Now however, there has been a substantial jump in stevedores' profitability in 2020–21, almost returning to the level of profitability in the period prior to the entry of greater stevedore competition with the commencement of Hutchison Ports in Sydney & Brisbane, and VICT in Melbourne.

The ACCC has concluded that the level of profitability of stevedores over the past 5 years does not appear to be indicative of the stevedores earning excessive returns. However, the ACCC is monitoring the situation.

Figure 4.1: Aggregate operating profit (EBITA) margins (industry vs. 3 incumbents): 1998–99 to 2020–21



Source: **ACCC analysis of information received from stevedores as part of the monitoring regime.**

The ACCC Container Stevedoring Monitoring Reports demonstrate that quayside revenue per lift for stevedores (i.e. the revenue collected from shipping lines) has fallen by **27.6%** over the past 10 years.

To make up for this lost revenue, since 2017, the stevedores have increased their landside terminal access charges (TACs - also sometimes referred to as landside infrastructure charges), vehicle booking charges and other ancillary fees, which now make up around **38%** of the stevedores' total revenue.

A major concern of transport operators, and in turn their import and export customers, is that Terminal Access Charges (TACs) and other landside fees are set and administered by the stevedores with no negotiation or input from landside customers (road and rail transport operators). This is due to the "standard form" contracts imposed by the stevedores on a "take it or leave it" basis discussed above.

Transport operators have become the "revenue collection agents" for the container stevedore companies.

As observed by the ACCC, most transport operators pass on increases in TACs and landside fees to cargo owners. However, some transport operators are not readily able to do so, due to fixed contracts with their customers that do not allow for the prices under those contracts to be varied, except at particularly intervals.

Transport operators also hold concerns that TAC and other landside fee increases are unpredictable, so they absorb some increases (for a period), and in many years the stevedores have increased their fees multiple times per year.

Many transport operators have informed the ACCC that increases in TACs and other landside fees have created cash flow issues, as there is a significant gap between when they must pay stevedores and when they receive payment from their customers. Transport operators also carry the "risk" that the fees they have paid will not be able to be recovered from their customers in the case of default.

The administrative costs borne by transport operators arise for the additional effort required to collect payments from customers and the need for adjustment to accounting processes and procedures to reconcile stevedore landside fee payments against individual jobs.

"Split-Tariff" Examples Globally:

Some commentators and container terminal operators themselves have indicated that the "re-balancing" of revenue collection towards the landside in Australia is similar to trends globally where there are "split tariffs" for container terminal services.

That is, in some overseas jurisdictions shipping lines are charged for the "blue-water" interface with the terminal (i.e. working the ship to load and discharge containers – the "lift revenue"), while cargo interests pay levies directly for landside terminal services (i.e. moving containers to/from container stacks in the terminal and to/from landside vehicles - road & rail).

This is not an accurate comparison with the evolving charging model in Australia:

- In Australia, transport operators are being charged the landside fees and not cargo interests (importers / exporters) directly.

- There is no ability or mechanism for landside stakeholders to challenge proposed price increases.

- There is no proclaimed independent "authority" vested with powers to arbitrate / adjudicate the reasonableness of proposed fee increases.

An overseas example is the "spilt tariff" regime in the Philippines, where the container stevedore companies, including the parent company of VICT in Melbourne, International Container Terminal Services

Inc. (ICTSI), must make a case for fee increases to the Government-owned Philippine Ports Authority (PPA). In turn, the PPA holds public consultation sessions with stakeholders and adjudicates on the veracity of the stevedore companies' submissions. See: https://www.portcalls.com/ppa-oks-10-cargo-handling-tariff-hike-manila-ports/

Another overseas example of a defined Public Tariff of container terminal charges which has good visibility of the exact charges levied on the vessel and cargo interests is DP World London Gateway in the UK (see: https://londongateway.blob.core.windows.net/n2cms/upload/PDF/LGW%20Public%20Tariff%2001JUL21%20v8.pdf)

DP World London Gateway specifically defines basic handling charges borne by the shipping line to include "*discharge from vessel and transport to stack or lift container from stack and load to vessel*" and "*receiving or delivering from/to truck and lift container between truck and stack*".

In other words, DP World recovers from shipping lines the costs (plus profit) of the terminal services from vessel discharge to landside vehicle delivery (or visa versa for export receival through to vessel loading).

The cargo interests do pay an infrastructure fee (section 2.5 of the above Tariff), but it is a vastly smaller amount than that charged in DP World Australia's container terminals (i.e. £10.05 = approx. AUD$19.00 per full import container, compared to AUD$144.70 per full import container at DP World Melbourne). This is because the main revenue for terminal services is collected through the ship operator, who, in turn, and in direct consultation with their cargo interest customers, charges a Terminal Handling Charge (THC) to the shipper (importer & exporter).

Australian Shippers (Importers & Exporters) Now Paying Twice for Container Terminal Services:

The container shipping lines charge importers and exporters (cargo interests) a Terminal Handling Charge (THC) as part of their tariff of Australian port fees. THCs traditionally cover the cost of handling containers at the container terminal, including terminal container stack and landside movements.

In Australia, there is real concern that Australia's importers and exporters (cargo interests) are now paying twice for the same container terminal services:

- Once when high container terminal infrastructure charges (terminal access fees) are passed onto them by transport operators who are levied these high charges by the container stevedores directly; and

- A second time when the foreign container shipping lines levy high Terminal Handling Charges (THCs) onto the cargo interests as part of their Australian port charges tariffs.

As noted by the ACCC, the foreign container shipping lines have enjoyed a reduction in Australian stevedore contract rates of over 27% in the last decade. The threshold question is have any of these savings been passed onto Australian importers & exporters in the form of lower THCs? The answer is no … THCs levied by the container shipping lines have increased in the same period.

As one example, Export Terminal Handling Charges (THCs) levied by ANL (CMA-CGM) in July 2016 for containers exported from Australia to New Zealand (loaded in Melbourne) ranged between $433 per 20' dry container to $675 per 40' reefer (refrigerated) container – see: https://www.anl.com.au/news/356/ttz-service-revised-othc-au-july-2016

In July 2021, the Export Terminal Handling Charges (THCs) levied by ANL (CMA-CGM) for containers exported from Australia to NZ (loaded in Melbourne) ranged between $525 per 20' dry container to $845 per 40' reefer container. See: https://www.anl.com.au/news/1576/revised-australian-terminal-handling-charges. The result is these THCs have increased between 21.25% to 25.19% from 2016 and 2021.

What Productivity Offsets Have Been Achieved?

CTAA's focus is on what productivity and efficiency measures flow from the increased revenue collected the stevedores through ever-rising landside fees? To date, these have been marginal in comparison to the quantum of fee increases levied.

As noted in the initial section of this submission, despite significant increases in landside terminal access fees, vehicle booking charges and landside ancillary fees:

- Average Truck Turnaround Times in the container terminals of Australia's five major container ports (TTT – ***Waterline 67***, BITRE, Dec 2021) deteriorated by 16.9% (Jul-Dec 2018 to Jul-Dec 2020)

- Average Container Turn Times deteriorated by 16.85% in the same period

- Containers per truck visit and TEUs per truck visit have remained stagnant

- The percentage of trucks backloaded fell by 12.82% in the same period.

Recommendations:

3. **National & State/Territory Governments jointly examine the relationship between stevedore landside charges, Terminal Handling Charges (THCs) levied for foreign container shipping lines, and their impact on Australian containerised import costs and container export commodity competitiveness.**

4. **In line with Recommendations 1 & 2, National & State/Territory Governments should jointly examine the relationship between the revenue generated by container terminals operators through increased landside container terminal fees, their impact on container terminal landside investments, and the opportunities for landside interface productivity improvements.**

Empty container management issues - "reasonableness" of container detention policies and practices imposed by shipping lines:

All international container shipping lines impose container detention terms & conditions on importers for the late return of empty container equipment (past an allocated "free time").

Export empty containers can also attract container detention fees if the exporter has picked up the empty containers but has not packed and delivered them to a container terminal for full export within a specified time.

Detention free periods and "tariffs" specifying the container detention amount charged per day are generally advertised on the respective websites of the container shipping lines. These charges differ depending on the type of container equipment, and the length of time held past the "detention free" period.

It is usual for the shipping line's Bill of Lading terms of carriage to incorporate a clause specifying that the terms and conditions of the ocean Carrier's Tariff apply to issues such as free storage time (at container terminals) and container demurrage and detention.

For example, the Terms of Carriage for Maersk Container Line read:

2. Carrier's Tariff
The terms and conditions of the Carrier's applicable Tariff are incorporated herein. Attention is drawn to the terms therein relating to free storage time and to container and vehicle demurrage or detention. Copies of the relevant provisions of the applicable Tariff are obtainable from the Carrier upon request. In the case of inconsistency between this bill of lading and the applicable Tariff, the bill of lading shall prevail.
(Source: https://terms.maersk.com/carriage).

Depending on the relative bargaining power of the shipper (importer or exporter), longer detention free times may be negotiated with the shipping line. However, small to medium size (SME) importers and exporters generally have little bargaining power or opportunity to amend the "standard form" contract conditions imposed by the shipping lines through the Bill of Lading terms.

Shippers (importers and exporters) and transport providers are concerned with the "reasonableness" of container detention policies and practices imposed by the shipping lines, as well as the quantum of the penalties applied.

Shipping lines levy the container detention fees directly to the importer. However, transport operators become involved in claims of liability for container detention fees if containers are not returned within the available "free days", even though the delays may be outside of the direct control of transport companies.

US Federal Maritime Commission (FMC) – "Reasonableness" of Container Detention:

CTAA sees merit in regulatory guidance on container detention policies and practices being adopted in Australia similar to the "Interpretive Rule" developed recently by the United States Federal Maritime Commission (FMC), and for disputes on container detention fees to be regulated through a competition authority such as the Australian Competition and Consumer Commission (ACCC).

In mid-2020, the US Federal Maritime Commission (FMC) issued guidance about how it will assess the reasonableness of detention and demurrage regulations and practices of ocean carriers and marine terminal operators (MTOs). The *US Shipping Act of 1984* prohibits ocean carriers and MTOs from not failing "*to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property*." (Section 41102(c), US Shipping Act).

The guidance is contained in an **Interpretative Rule** regarding unjust and unreasonable practices with respect to demurrage and detention. (*US Federal Register / Vol. 85, No. 96 / Monday, May 18, 2020 / Rules and Regulations - https://www2.fmc.gov/readingroom/docs/19-05/19-05_fnl_rul_fr.pdf/*)

The Federal Maritime Commission (FMC) is responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer. This includes administering powers under the US Shipping Act of 1984, the Foreign Shipping Practices Act of 1988, and the Merchant Marine Act of 1920.

Established in 1961 by the Kennedy Administration, the FMC's mission is to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

There is no direct equivalent Government agency established in Australia.

However, the Australian Competition and Consumer Commission (ACCC), as an independent Commonwealth statutory authority, enforces the *Competition and Consumer Act 2010* (the CCA) and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.

This includes the administration of Part X of the CCA providing a wide suite of exemptions from Australia's competition law for ocean carriers providing international liner cargo shipping services to and from

Australia, as well as the provisions of the CCA relating to unconscionable and misleading conduct, and the misuse of market power.

Purpose of Container Detention as a Principle:

A fundamental tenant of the US FMC Interpretive Rule is an overarching Incentive Principle that "*In assessing the reasonableness of … detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity.*"

In the supplementary information provided as a preamble to the Interpretative Rule, the FMC contends that "*the primary purpose of detention … is to provide an incentive for cargo interests … to return (container) equipment in a timely manner.*"

With the overarching Incentive Principle in mind, in relation to empty container return, the Interpretative Rule states that "*absent extenuating circumstances, practices & regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable*."

In the supplementary information, the FMC provides the following example: "*if an ocean carrier directs a trucker to return a container to a particular terminal, and that terminal refuses to accept the container, no amount of detention can incentivize its return.*"

The FMC states further that: "*Importers, exporters, intermediaries and truckers should not be penalized by demurrage and detention practices when circumstances are such that they cannot retrieve containers from, or return containers to, marine terminals because under those circumstances the charges cannot serve their incentive function.*"

The FMC also cites other situations that might be "unreasonable", such as "*uncommunicated or untimely communication notice of terminal closures for empty containers*."

Incentive Principle in the Australian Context:

A major and growing concern of Australian importers, freight forwarders and their transport providers is the imposition of container detention fees by shipping lines despite there being no physical opportunity to de-hire (return) an empty container in the timeframe imposed due to:

- The nominated return location being closed (i.e. limited operating hours, and/or closed on weekends / public holidays); or

- The nominated return location not having the gate or facility capacity to accept the return in a timely manner (i.e. not being able to secure a return timeslot in what would be considered a reasonable timeframe, or the facility has effectively reached capacity); or

- Redirections of empty de-hires to an alternative facility from that nominated originally by the shipping line (empty container park or container terminal). This causes a time lag in being able to secure a de-hire timeslot at the alternative facility, which in turn can lead to the container not being returned within the imposed "free time".

During Peak Season in late 2020, and again in 2021, numerous examples can be provided where transport operators (on behalf of their importer / forwarder clients) have been unable to secure empty container return timeslots at nominated return facilities within a reasonable period before container detention fees are incurred.

Also, where the shipping line is in direct control of the empty container return depot, existing container detention terms provide no incentive for the shipping line to address any operational inefficiencies of its owned facility or to provide a reasonable container de-hire alternative.

Instead, the shipping line stands to profit from the inefficiencies by levying container detention fees on the importer despite the operational inefficiencies of the facility contributing to the late return.

In the initial Petitions to the US Federal Maritime Commission by cargo interests, intermediaries and transport operators which led to the FMC's fact-finding study and ultimately the Interpretative Rule, the point was highlighted that permitting ocean carriers to levy detention charges even when equipment could not be returned weakened any incentive for ocean carriers (shipping lines) to address congestion and their own operational inefficiencies (*Federal Register / Vol. 85, No. 96 / Monday, May 18, 2020 / Rules and Regulations – page 29639*).

In the circumstances above, it is not considered "reasonable" for any shipping line to continue to count down the "container detention clock" and apply container detention fees.

In addition, several international container shipping lines commence counting the "container detention clock" from the time when the container is discharged from the arriving vessel, irrespective of whether the container is physically available to be collected from the container terminal.

The quantum of the container detention fees charged by the shipping lines are also of concern.

For example, Maersk Line in Australia offers an 8-day detention free period from the container discharge date to gate in empty return. Thereafter, detention charges apply ranging from AUD$80 per day for a 20' dry container to AUD$320 per day for 40' specialised container (such as reefer container – after 21 days). See: https://www.maersk.com/local-information/asia-pacific/australia/import

It is questionable whether the high detention fee quantum matches the "opportunity cost" to the shipping line of the late return of the container which otherwise could be repatriated elsewhere or provided to an exporter in order for the shipping line to earn ocean freight revenue.

Also, the cost to the shipping line of the receipt of the empty container into an empty container depot and the cost of daily storage inside the depot prior to the container's next use are miniscule in comparison to the container detention charge quantum.

Recommendation:

5. **Powers should be vested in the Australian Competition and Consumer Commission (ACCC) to rule on the "reasonableness" of container detention polices and charges imposed by container shipping lines in Australia, and to establish a container detention fee complaint and dispute resolution mechanism.**

Workforce and labour supply impediments:

The COVID pandemic and international border closures have contributed significantly to workforce labour and skills shortages in the landside container logistics sector.

For instance, on the east coast of Australia, the Omicron variant has contributed to current labour absenteeism of between 10% to 20% (on average), with some extreme cases reported of between 30% to 50% of labour unavailable as a COVID positive case or "close contact".

COVID aside however, there is an underlying structural concern with the attraction, training and retention of skilled (and semi-skilled) labour in the freight transport sector.

The interruption to international migration has been telling, as a good percentage of labour, including heavy vehicle drivers, has been sourced from the migrant intake who already possess recognised competencies.

Unfortunately however, “truck driver” is not recognised on Australia’s eligible skilled occupation list for migration (https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list), despite a significant shortage of competent heavy vehicle drivers being forecast.

The sector also suffers from an ageing workforce profile – the overall average age of workers in the transport and logistics sector in Australia is 46.5 years of age, 79% of whom are male and 21% female. For the heavy vehicle driver cohort, 97.5% are male.

The workforce aging rate is 2.2 times that of all industry categories (source: *Transport and Logistics Industry Outlook 2021, Australian Industry Standards*)

60% of the workforce in the road transport industry is heavy vehicle drivers - over the past five years, employment in the industry has risen by 3.9%, and this level of driver demand is forecast to increase by 4.6% to 2026.

The top priority forecast occupation is competent heavy vehicle drivers, while the top priority skills are health & safety, operational skills, compliance, and digital skills.

The industry’s national skills council (*Australian Industry Standards*) has proposed, and National Cabinet has endorsed, the development of a Heavy Vehicle Driver Apprenticeship (based on the existing competencies in the VET Certificate Level III in Driving Operations).

This development is welcomed. However, the challenge will be for State-based licencing authorities to accept and recognise competency-based training outcomes that remove impediments to progression through the heavy vehicle licencing categories in a timely manner.

In other words, modification of the “time served” component of the current licencing laws is required (i.e. the need to hold a Medium Rigid (MR) or Heavy Rigid (HR) for a minimum of 12 months before being able to apply for a Heavy Combination (HC) licence, and again hold the HC licence for a minimum of 12 months before applying for a Multi-Combination (MC) licence) to be replaced by true competency-based skills training and assessment across the graduated licencing categories.

Most of the driving roles in Australia’s container transport sector require a Heavy Combination (HC) to drive an articulated semi-trailer combination, or a Multi-Combination (MC) licence (required to operate B-doubles and larger freight vehicle combinations).

To attract and retain a younger driver cohort, and to ensure an adequate pool of trained and competent heavy vehicle drivers at the higher licence classes, requires recognition of competency training and assessment, and the reduction or removal of the “time served” regulations that unnecessarily hinder job progression.

Australian Governments are also keen to promote and regulate the uptake of the latest safety and environmental technologies in modern heavy vehicles.

See for instance the *Vehicle Safety and Environmental Technology Uptake Plan* adopted by the National Heavy Vehicle Regulator (NHVR) in June 2020, which aims to:

- remove regulatory barriers that limit the adoption of advanced technologies
- offer productivity gains as an incentive for the adoption of advanced technologies
- provide education to industry on the safety, productivity and environmental benefits of new vehicle technology

In support of the uptake and use of the latest heavy vehicle safety and environmental technologies, there is a need for the skills of heavy vehicle drivers and other worker categories in the freight logistics industry to encompass the best use of these technologies.

Recommendations:

6. **The category of "Truck Driver" should be added to Australia's Skilled Occupation List and targeted campaigns should be established to attract migrants with existing truck driver skills to Australia.**

7. **State-based licencing authorities must accept and recognise competency-based training outcomes that remove impediments to progression through the heavy vehicle licencing categories in a timely manner.**

Need for container shipping and logistics to be classed as an "essential service" with supply chain continuity protections enshrined in law:

In the last several years, all the container stevedore terminals in Australia have been beset by industrial relations disruptions that have impacted on vessel delays as well as falling landside interface productivity levels.

These delays and productivity declines have contributed to landside cost increases, at a time since the beginning of the COVID-19 pandemic and its associated spike in international container trade demand.

Current workplace relations laws allow for employees to undertake "protected industrial actions" in pursuit of bargaining outcomes after the expiration of existing Enterprise Agreements (EAs), and subject to a successful of workers and adequate notice to employers.

The Fair Work Commission (FWC) can make an order to suspend or terminate protected industrial action on its own initiative, or on application by:

- a bargaining representative for the enterprise agreement;
- the Federal Minister for Employment; or
- a Minister of a State or Territory who has referred certain industrial relations powers to the Commonwealth.

The FWC can make such an order when the action has threatened, is threatening, or would threaten to endanger the life, personal safety, health or welfare of the population or part of it, or to cause significant damage to the Australian economy or an important part of it. In practice however, this does not adequately or specifically take account of the "critical service" nature of Australia's international supply chains.

While employees and their representative unions should have the right to protected industrial actions during the Enterprise Agreement bargaining process, no union or employer should be able to hold critical international trade gateways "to ransom" in pursuit of their industrial agenda.

In circumstances where industrial bargaining disputes do arise in defined "essential industry sectors", including the container shipping and logistics sector, there should be clearer pathways to arbitration outcomes by the Fair Work Commission (FMC), and stronger powers to suspend or cancel such industrial actions if supply chain continuity is significantly threatened.

Recommendation:

8. **The Federal Government should review workplace relations laws to better support business continuity in "essential" industry sectors.**

Any queries related to this submission should be directed to the undersigned – email:

Yours sincerely,

Neil Chambers
Director