Comments of the

World Shipping Council

Submitted to the

Australia Government
Productivity Commission

In the matter of

Lifting Productivity at Australia's Container Ports: Between Water, Wharf and Warehouse

Draft Report, September 2022

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14 October 2022

The World Shipping Council ("WSC") respectfully files these comments in response to the Productivity Commission's ("PC") Draft Report entitled "*Lifting Productivity at Australia's Container Ports: Between Water, Wharf and Warehouse,"* issued in September 2022.

WSC is a non-profit association that represents the international liner shipping industry. WSC members operate over 90 percent of world's liner shipping capacity, and a number of our members provide substantial liner service in the Australian markets. WSC members have invested hundreds of billions of dollars in ships, port terminals, and related infrastructure to ensure that a wide variety of options continue to exist for safe, dependable and economical international ocean transportation of cargo. WSC has offices in Singapore, Brussels, and Washington, D.C. to ensure active engagement with governments and international bodies on important policy matters impacting the liner industry.[1]

Liner shipping is a key component in the international transportation of cargo. The liner sector of the ocean shipping industry provides importers and exporters with regular and reliable ocean transport based on fixed schedules and itineraries. Liner shipping vessels carry cargoes such as manufactured goods, consumer products, and agricultural commodities. As the PC found in its Draft Report, the liner shipping industry both globally and in Australia remains highly competitive, with numerous ocean carrier options for Australian importers and exporters.[2] International liner shipping companies have operated in this highly competitive shipping environment for many years in the Australian trades and have successfully provided many important benefits to the Australian economy. Liner shipping is a vital element in Australia's economic growth and development. This is particularly the case in Australia, where as an island nation, it is reliant on external trade.

On 11 February 2022, WSC filed comments in response to the PC's initial public consultation and attached a whitepaper entitled "Liner Shipping – The Backbone of World Trade," to aid in the PC's inquiry into the long-term productivity of Australia's maritime logistics system viewed in the context of the global maritime environment. As WSC explained, the COVID-19 pandemic indeed put a strain on international supply chains and disrupted global trade. WSC's whitepaper provided an overview of the liner shipping industry, as well as WSC's views on the current state of the global supply chains and how all stakeholders in the container supply chain can best contribute to robust supply chains. Since those comments were filed, some progress has been made to reduce congestion and restore fluidity in global ports but work for all stakeholders continues even as the shipping markets start to normalize.

WSC's colleague, Shipping Australia Limited ("SAL"), is also submitting detailed comments on behalf of the local ocean carrier industry to the PC on the Draft Report. WSC strongly supports those comments. However, WSC believes it is important to separately share its views with the PC on certain aspects of the Draft Report from an international perspective. WSC limits its comments herein to Draft Recommendations 6.1 (focusing on Part X), 6.2 (focusing on terminal access charges), and 6.3 (focusing on shipping contracts).

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[1] More information about WSC may be found at www.worldshipping.org.

[2] Draft Report at 16 ("Competition is robust in the market for shipping lines' services. While lines have been consolidating over the past three decades, multiple providers service Australia and cargo owners can easily switch between them.").

<u>Draft Recommendation 6.1: The Australian Government should repeal Part X of the *Competition and Consumer Act 2010* (Cth) (CCA).</u>

As background, the PC's Draft Recommendation 6.1 has already been addressed by the Australian Competition and Consumer Commission ("ACCC"), which released for public comment a "Proposed Class Exemption for Ocean Liner Shipping Discussion Paper," on 3 December 2019 ("Discussion Paper"). WSC filed comments with the ACCC on that Discussion Paper. Part X of the Competition and Consumer Act 2010 ("Part X") has for many years provided a broad framework for regulating international liner shipping in Australia. Part X provides ocean carriers with an exemption from the Competition and Consumer Act 2010 ("CCA") to cooperate with respect to a number of activities including agreeing on operational matters like vessel capacity and schedules, pooling of earnings, losses, or traffic, and coordinating prices. In this regard, Part X has historically exempted ocean carrier operational agreements, such as vessel sharing agreements ("VSAs"), slot charter agreements ("SCAs"), and slot exchange agreements ("SEAs"), as well as commercial agreements, such as liner conferences and voluntary discussion agreements ("VDAs"). Part X requires that these cooperative agreements register with the Department of Infrastructure, Transport, Cities, and Regional Development, as well as provide notice to the designated peak shipper body for Australian importers and exporters and consult with that body regarding minimum levels of shipping services that the ocean carriers will provide through such agreements.

It was the ACCC's preliminary views in the Discussion Paper that: (1) the Government should repeal Part X and replace it with a narrower class exemption for the liner shipping sector, (2) a new more appropriately tailored class exemption, should provide continuing legal certainty to purely operational arrangements including VSAs, SCAs, SEAs, and other operational agreements, in order to "improve the service supplied to cargo owners with a low risk of substantially lessening competition", and (3) "any class exemption should not cover agreements or coordination on price" charged to customers which would therefore likely exclude liner conferences and VDAs from any new class exemption. The ACCC reiterated these preliminary views to the PC in its response to the PC's initial public consultation.

WSC agrees with all of these preliminary views. WSC advised the ACCC that it considers various aspects of Part X to be outdated and inconsistent with best international standards. In this regard, while the legal protections currently provided by Part X to VDAs and other agreements on prices are no longer necessary or desirable, the continued importance of operational agreements to liner operators, their customers, and global economies cannot be overstated. Virtually all liner operators continue to rely on VSAs, SCAs, and SEAs to provide service to importers and exporters in most trades, including Australia. Similarly, WSC noted to the ACCC that a simpler administrative approach in a narrower class exemption to replace Part X would appropriately balance the Government's interest in maintaining sufficient oversight over the liner industry's activities with the industry's ability to be nimble in responding to changes in market dynamics for the benefit of improved service.

In light of the above, WSC reiterates its view that it supports the PC's recommendation to repeal Part X and replace it with a narrower class exemption. The PC has stated in the Draft Report that "either a class exemption or the existing provisions under Part VII of the CCA could deal with shipping line agreements under a net public benefit test once Part X is repealed". WSC supports a class exemption for ocean carrier operational agreements, which is consistent with the purpose of a class exemption under section 95AA of the CCA to grant an entire class of agreements/conduct in an industry authorization to undertake a type of activity if certain criteria set forth in the CCA are met. This approach is consistent with the 2015 Harper Competition Policy Review that preceded the ACCC's Discussion Paper. As the PC notes (at 187), the Harper Review recommended a class exemption over individual authorizations under section

88 and 89 of the CCA because it thought that subjecting shipping lines to individual authorization "might lead to unnecessary compliance costs for some operators". Individual authorizations would also be quite burdensome on the ACCC from an administrative point of view if it were required to review each and every application for authorization. As discussed below, the class exemption approach is also consistent with a number of Australia's global and regional trading partners that have "block" or class exemptions for ocean carrier operational agreements.

The PC also notes that in support of a new class exemption, "shipping lines should show that their agreements provide a net public benefit". WSC responds to the PC — as it did to the ACCC — that each category of operational agreements discussed above meets the standard for a class exemption under the CCA, because these agreements do not and are not likely to lessen competition, and they result in overall public benefits. By allowing ocean carriers to exchange or share space on each other's vessels, or integrate their vessels into a coordinated operating arrangement, these arrangements enable each carrier to offer more service in more trades with lower capital cost commitments and better utilisation of space. The result for carriers is a reduction of operational costs, the promotion of efficient use of vessel capacity, and a greater incentive to make investments in new and more efficient and environmentally beneficial tonnage. The result for importers and exporters, and national economies, is broader service coverage on newer, more efficient and technologically up-to-date vessels. WSC retained RBB Economics, a consulting firm specialising in competition economics with particular expertise in the liner shipping sector, to provide an independent report to supplement its submission to the ACCC ("RBB Report"). The RBB Report included data, statistics, and analyses on the Australian liner shipping market demonstrating the public benefits and economic efficiencies of carrier operational agreements. At a high level, the RBB Report demonstrated:

(1) The majority of current services between Australia and Asia are offered through VSA cooperation, and ports in Asia are important hubs for containers to or from Australia because these ports provide a link to the main East-West trades to Europe and North America;

(2) VSAs result in benefits to customers as cooperation between carriers allows for the generation of efficiencies through using larger vessels whilst at the same time allowing for services with a regular frequency;

(3) VSAs lower barriers to entry by allowing shipping lines the ability to offer services where they would not have the scale to offer such services on their own;

(4) The liner industry remains highly competitive, with numerous carrier options for importers and exporters in virtually all trades and in the Australia trades[3]; and

(5) VSAs improve Australia's connectivity with other global ports.[4]

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[3] This is consistent with the PC's Draft Finding 6.2, which states in relevant part: "There appears to be robust competition in the shipping line market. Multiple shipping lines service Australia and cargo owners can easily switch between them."

[4] For more than a decade, the United Nations Conference on Trade and Development ("UNCTAD") has maintained a liner shipping connectivity index ("LSCI") for most trading nations of the world. UNCTAD's LSCI shows the integration

Moreover, as liner shipping is by definition an international business, the ACCC noted in its Discussion Paper that it is important to consider the broader regulatory environment for carrier operational agreements when considering any changes to the Part X regime in Australia. The ACCC's Discussion Paper both accurately noted that some global regulators have over the past few years removed or limited competition law exemptions for commercial agreements, and that operational agreements have been, and continue to be, recognized globally as providing efficiencies to customers and therefore generally continue to be provided protections from the application of competition laws. Virtually all of the major trading nations in the world (including Australia and many of its key trading partners) that have studied this issue have recognized the importance of carrier operational agreements in promoting liner services, while preserving competitive choices for importers and exporters. Such protections are provided for in various forms, including statutory exemptions (e.g., New Zealand, Japan, South Korea, Taiwan, U.S., and Canada), regulatory exemptions (e.g., China), and block or class exemptions (e.g., EU, Hong Kong, Singapore, Malaysia, and Israel). Since WSC filed its comments with the ACCC in February 2020, Singapore, Hong Kong, and Israel all reviewed and renewed their block exemptions. [5]

In sum, WSC supports the PC's recommendation that Part X be repealed but reinforces that Part X must at the same time be replaced with a narrower class exemption for critical operational agreements that support liner carriers and the customers serving the Australian trades. That new class exemption should apply broadly to all types of carrier operational agreements, including SCAs, SEAs, VSAs, but should exclude any commercial agreements, including any agreements that permit carriers to discuss or coordinate on matters such as prices. The Government must avoid any gap in legal coverage for these important agreements when transitioning from the Part X framework to a class exemption. If Part X (which currently covers operational agreements) was repealed, but not simultaneously replaced with a narrower class exemption covering operational agreements, there would be legal uncertainty. Given that operational agreements are used in virtually all trades, the repeal of Part X in the absence of a class exemption could trigger a breakdown in market structure and trade as carriers consider how to deal with existing operational agreements under a new legal regime. Carriers may also be reluctant to enter into new operational agreements given the increase in risk and complexity and there could be a chilling effect on efficiency-enhancing cooperation in the liner shipping industry. The likely result is that there would be a reduction in service choices and/or increase in prices, which would be detrimental to all. A class exemption, on the other hand, would expressly list the specific types of conduct permitted, and thus inform liner operators what they can and cannot do with respect to vessel sharing activities in order to benefit from the exemption. In this regard, a class exemption to replace Part X would increase compliance

level of countries to global liner shipping networks. The higher a score is on the index, the higher the integration of a given country to liner shipping networks. The LSCI is composed of six components: (1) the number of ships, (2) the total container-carrying capacity of the ships, (3) the maximum vessel size, (4) the number of services, (5) the number of companies that deploy container ships on services from and to a country's ports, and (6) the number of other countries that are connected to the country through direct liner shipping services. Australia's LSCI score has increased by 36.7% from 26.2 in 2006 to 35.8 in 2022.

[5] The EU and Malaysia block exemptions are currently under review. The Malaysia Competition Commission has proposed to renew its block exemption and has just concluded a public consultation period on that proposal. The EU initiated its review in August and public comments were submitted in October. WSC notes the recent comments of DB Schenker, a global logistics provider, that "carrier servicing of shippers and ports will be reduced 'drastically' if the EC decided to remove container liners' exemption form EU competition regulation". *See* *https://shippingwatch.com/logistics/article14479108.ece?utm_campaign=ShippingWatch%20Newsletter&utm_content=2022-10-10&utm_medium=email&utm_source=shippingwatch_com*.

and provide the greatest possible legal certainty for carriers entering into and modifying operational agreements.

Draft Recommendation 6.2: Terminal access charges and other fixed fees for delivering or collecting a container from a terminal should be regulated so that they can only be charged to shipping lines and not to transport operators.

The PC has recommended that "regulations should be established that prevent container terminal operators from charging transport operators any fixed fees associated with delivering or collecting a container. Container terminal operators would not be prevented from charging these fees to shipping lines." The PC's ultimate recommendation appears to be that "any fixed fees for delivering or collecting a container from a container terminal operator cannot be charged to transport operators". This appears to be based on the fact that neither the transport operator (rail or truck), nor the cargo owner who hires it to pick up or drop off a container, selects a terminal. According to the PC, this means neither can "shift their business if they are dissatisfied with the cost or quality of service from a container terminal operator."

At the outset, to the extent that a terminal operator seeks to charge a fee on a transport operator for services relating to movement of a container on a terminal, there is nothing to prevent that transport operator from seeking reimbursement of that charge from its own customer, the importer or the exporter, through normal commercial negotiations since their customer is the ultimate beneficiary of the service for which the terminal is seeking to be compensated.[6] It is not clear why there would be any need for government intervention into this type of commercial negotiation between sophisticated business parties. An agreement to transport cargo involves a balancing of many commercial factors, and this is reflected in individualized service and price arrangements between multiple parties. Thus, it is impossible to isolate one cost element without considering the overall balance of revenue, costs, and service factors for each party, which makes it impractical for governments to assess the reasonableness of each charge.

It is also not clear why the PC believes ocean carriers should disproportionately bear these costs just because they select the terminal at which their vessels call, when again the importer and exporter are the ultimate beneficiaries of the services being performed. While the precise scope of what the PC has recommended is not entirely clear from the Draft Report, to the extent that the PC is recommending that ocean carriers should be responsible for any terminal related charges (and similarly be prevented from negotiating allocation of and responsibility for these costs with their own customers), most governments are of the view that it is best left to the parties to those commercial arrangements to decide how to allocate their costs and obligations among themselves depending on the circumstances involved, rather than for the government to interfere with these commercial relationships, or otherwise mandate that commercial or contractual practices be used on a generic basis. The absence of parallel provisions in other countries' laws arises from the recognition in those countries that such restrictions would be antithetical to free trade, to efficient ocean transportation and to general principles of freedom of contract.

Draft Finding 6.2 also notes that "Prior to the COVID-19 pandemic, terminal handling charges charged to cargo owners by shipping lines were not declining despite these charges to shipping lines from container terminal operators declining." Again, while this is not entirely clear from the PC's

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[6] The PC itself recognizes this (at 200) when it notes that "Further, having these fixed charges levied on shipping lines rather than transport operators will not create a distortion as all charges are eventually paid by cargo owners. Rather it simply moves the charges from the market where the container terminal operators have significant market power to the market where they lack such power."

recommendation, WSC believes it is important to clarify what could be a fundamental misunderstanding about terminal handling charges ("THCs"), i.e., that they are simply a "pass through" terminal charge from carriers to their customers. As background, ocean carriers collect THCs to recover from their customers various costs relating to the loading and unloading of containers at the marine terminal, and other related costs borne by carriers associated with receiving, delivering, and discharging cargo at the terminals. The practice of assessing a THC is internationally accepted. THCs are not unique in Australia. They have been assessed in virtually all trade lanes in the world for many years with very limited exceptions.

THCs arose in part from the evolution of containerization in the liner shipping industry. Prior to containerization, the traditional method of charging for cargo handling was for the exporter at origin to effectively deliver cargo alongside the ship. All the charges for moving cargo to and from alongside the ship were for the exporter's account. With the advent of containerization, however, ports and stevedores formulated their own separate charges from the port gate to delivery of the container onto the ship. The responsibility and the cost of container handling shifted as ports began charging carriers directly for these handling services, and carriers' shore side costs began to increase dramatically. In the 1990s, importers and exporters in various trades expressed to carriers a desire to see more transparency in their ocean freight rates by separating the shore side costs (primarily the terminal costs) from the ocean side costs. Thus, the THC was created based on customer demand.

By separating shore side costs from the ocean freight rate, ocean carriers are able to quote freight rates to shippers which: (1) are primarily subject to market supply/demand conditions (terminal handling costs, in contrast, are relatively more stable even as trade conditions fluctuate); (2) are subject to internal costs (i.e., those costs relating to the level of ocean service that fall within carriers' control as compared to shore side and fuel costs are in many cases controlled by third parties); and (3) are not subject to fluctuation of currency (while ocean freight rates are generally payable in US dollars, shore side costs are generally paid in local currency).

For the PC's information, the Federal Maritime Commission ("FMC") in the United States (an agency that the PC positively cites elsewhere in its Draft Report) studied THCs and rejected any notion that they are merely pass-through terminal charges. Specifically, the FMC found that THCs cover an array of shoreside services involved in delivery of cargo and containers from ship's tackle to place of rest and are related to numerous costs incurred for handling transfer of cargo and equipment at the terminal. In finding that THCs were "not represented as pass-throughs of specific out-of-pocket expenses," the FMC found that THCs relate to the entire range of internal and external costs involved, such as receiving, delivering, loading, and discharging cargo at the terminals, which is not covered by the basic ocean freight.[7]

In another related FMC proceeding, a group of shippers filed a complaint with the FMC alleging that several carriers violated the U.S. Shipping Act regarding their THCs. The shippers argued they should not be required to pay for the segment of the transportation for which the THC was created and is assessed, i.e., from ship's tackle to place of rest. Again, finding no violation under the Shipping Act, the decision adopted by the FMC set forth the agency's understanding of the purpose of the THC, including the various terminal-related services the THC was intended to cover:

> The THC is a charge assessed to recover part of the carriers' costs related to port and terminal expenses. These costs include such as wharfage, chassis costs, equipment

[7] *See Notice of Inquiry Concerning the Use and Effect of Surcharges,* FMC Docket No. 91-74 (Jan. 1992).

> M&R, port assessment, tallying sorting and stacking of cargo, movement of containers from ships' hook to stack, stack shifting, transfer to inspection points, lifting on and off chassis, gate moves, inspections, extra labor, longshoreman's wage assessments, mounting and demounting of clip-on units, electrical power and reefer monitoring. Since 1986 there has been a comparable terminal receiving charge in the outbound trade applicable to all U.S. ports of loading.[8]

Thus, if the PC's recommendation is that cargo owners should not be responsible for THCs, and that recommendation is based on the assumption that carrier THC charges are the same as terminal charges, this recommendation is based on a fundamentally incorrect understanding of the THC charge itself.

Draft Recommendation 6.3: Shipping contracts should not be exempt from the "Unfair Terms" provisions in Australian Consumer Law. The Australian Government should remove this exemption.

The PC has recommended that shipping contracts should not be exempt from the so-called "Unfair Terms" provisions in Australian Consumer Law ("ACL"). This appears to largely be based on a concern raised by some industry participants regarding "detention fees". WSC believes that the PC should reconsider this recommendation for several reasons, as it unintentionally could do more harm than good.

First, consumer laws like the ACL are generally premised on a perceived unequal negotiating position between parties to an agreement, such as agreements between businesses and individual consumers. The purpose of these laws is to ensure that any party with unequal bargaining power does not impose unfair terms to the disadvantage of the other party. In this regard, the PC notes that the ACL applies to contracts that "have been entered into by *at least one consumer or small business* (that is, a business that employs less than 20 people, including casual employees)" and "provides for an upfront price that is no more than $300,000, or $1 million if the contract is for more than 12 months". The ACL prohibits parties with such bargaining power from imposing terms on consumers or small businesses that allow them to avoid or limit their obligations under the contract, terminate the contract unfairly, or unfairly vary the terms of the contract.

Shipping contracts, including contracts for the carriage of goods by ship, do not fall into this category of agreements, which is one reason why they are exempt from the ACL. They are typically business-to-business relationships between a carrier and its importer and exporter customers, where there is an equal balance of authorities. With respect to the allocation of particular costs, there is also a recognition that each cost is a part of a broader negotiation on overall price and service. Moreover, as noted in the ACL Guide to Businesses, "shipping contracts are subject to a comprehensive legal framework (nationally and internationally) that deals with maritime contracts."[9] In other words, contracts between carriers and their customers include a complex set of terms regarding both ocean and intermodal moves.[10]

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[8] *See Meat Importers Council of America, Inc. v. Australia-Pacific Coast Rate Agreement,* FMC Docket No. 91-16 (July 1992).

[9] https://consumer.gov.au/sites/consumer/files/2016/05/0553FT_ACL-guides_ContractTerms_web.pdf.

[10] The PC acknowledges in the Draft Report (at 19) that "international law [already] covers contractual terms in a maritime context."

It is for all these reasons that application of the ACL to shipping contracts would be both unusual and unnecessary.

Moreover, since this recommendation appears to be based on concerns relating to detention fees, and an apparent finding by the PC that such fees are inherently "unfair," WSC believes the PC could benefit from additional background on these charges. The primary purpose of carrier detention charges is to incentivize consignees to promptly pick up their loaded containers from the port and to promptly return the empty containers to the carriers. Without that financial incentive to keep containers moving, cargo interests have an incentive to use marine terminals as warehouse substitutes for loaded containers, and to allow empty containers (often mounted on chassis) to linger at the place of unloading. If detention charges were in any way prohibited or subject to additional government restrictions, the economic signal to cargo interests would be to slow down the movement of both loaded and empty containers, which would only harm the Australian maritime logistics sector and the supply chain.

Pursuant to longstanding commercial practices in the shipping industry, when cargo interests fail to pick up their cargo from the port or depot or fail to return empty shipping containers to ocean carriers, marine terminals and ocean carriers will charge demurrage and detention fees. In this regard, detention and demurrage charges serve an important transportation and trade purpose – to keep cargo flowing by providing an incentive for cargo interests to promptly and efficiently pick up their cargo from the yards and to return empty containers. Keeping cargo moving is important to all supply chain participants. These charges help ensure that cargo does not pile up in marine terminals and depots, which would create port congestion that would delay the delivery and processing of other cargo shipments that need to use the terminal and motivate carriers' customers to return empty containers so they can be used to transport export cargo.

In addition to this incentive purpose, it is also important to understand that when equipment is not returned and cargo does not flow freely, there are also real costs involved. Detention and demurrage charges are used to allocate risk and provide compensation for those costs. Specifically, detention charges compensate ocean carriers for direct equipment costs and the lost opportunity costs associated with not having access to containers that are not returned on time. For ocean carriers, container unavailability leads to a reduction in asset utilization/turnover and subsequently a loss of sales.

The PC states it sees support for its recommendation, and merit in the U.S. FMC's "Interpretive Rule," which provides guidance to the industry on assessment of detention fees. While the FMC's Interpretive Rule does give guidance to the industry on certain practices relating to detention charges that the FMC would deem to be "unreasonable," the PC's summary of the "Interpretive Rule" is incomplete. First, the FMC did not say that all detention charges were unfair or unreasonable. The FMC expressly noted that the new Interpretive Rule was only intended to be a guidance document, and that the rule did not create any new legal requirements or binding commitments on the parties. In the rule, the FMC repeatedly stated that the listed factors that might be relevant in any particular complaint case as to whether a particular charge was reasonable were "a non-exclusive list of factors that the Commission may consider" and that the rule does not set out specific "mandates" or "requirements". The rule explicitly states that "it does not prescribe specific practices that regulated entities must adopt." Thus, after issuance of this rule, cases in the U.S. will continue to be decided on their particular facts, and the new Interpretive Rule does not foreclose parties from raising, or the FMC from considering, factors beyond those listed in the rule when considering whether certain detention and demurrage practices are reasonable. Without adopting a "one-size-fits-all" set of regulations, the new rule in the U.S. encourages transparency and provides guidance to the industry on how the regulator

will look at various factors that may arise in detention and demurrage complaint cases, which allows individual companies to review and tailor their practices as they believe necessary.

Second, the U.S. continues to recognize the permissibility of surcharges like detention fees generally. Prior to 1984, the FMC had authority to suspend ocean carrier surcharges, or prescribe rules relating to such surcharges, if there was a substantial reason to believe they were so unreasonably high or low as to be detrimental to U.S. commerce. The U.S. Congress, however, made the decision to remove that authority with the passage of the U.S. Shipping Act of 1984, and that aspect of the law has remained the same since then. The FMC thus no longer has the authority to reject any particular carrier charges or prescribe the levels of such charges. These commercial issues are left to the individual carrier and its customer to decide, consistent with best international practices.

Thus, for the reasons stated above, subjecting one element of a commercial agreement between shipper and carrier with potentially harmful government directives under the ACL could in fact undermine the overall contract of carriage, making it more difficult for carriers to provide reliable transportation services, and foster supply chain disruptions and port congestion as cargo interests fail to return empty containers and leave import cargoes on the docks or in container depots for long periods of time.

To keep cargo flowing, the Australian Government should preserve, not prohibit or otherwise regulate in any prescriptive manner, measures that create incentives for cargo interests to promptly retrieve their cargo containers from the ports, unload those goods from the containers, and return the empty containers to the ocean carriers within the agreed free time between the ocean carrier and the customer. Any efforts to restrict the ability to collect detention charges would promote unhelpful behavior by cargo interests that would slow down the movement of goods and the containers that carry them, contribute to port congestion, and reduce the reliable flow of commerce into and out of Australia.

WSC greatly appreciates the opportunity to provide these comments to the PC on its Draft Report and urges it to take them into consideration as it prepares its final report for the Government's consideration. WSC remains available to discuss these issues with the PC during the course of its review.

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