



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

**REVIEW OF PART X OF THE TRADE PRACTICES ACT 1974:
INTERNATIONAL LINER CARGO SHIPPING**

**PROF J. SLOAN, Presiding Commissioner
MR G. POTTS, Associate Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON MONDAY, 6 DECEMBER 2004, AT 9.21 AM

Continued from 1/12/04 in Sydney

PROF SLOAN: Welcome to the public hearings for the Productivity Commission's review of Part X of the Trade Practices Act which relates to international liner cargo shipping. I'm Judith Sloan, the Presiding Commissioner for this inquiry, and I'm joined today by my colleague Associate Commissioner Gary Potts. I've got in the audience - the big audience - Ross Wilson from the staff and Luke Van Hooft.

I would like to welcome to the hearings our first participant, the Tasmanian Freight Logistics Council. Could you please, for the record, state your name and any organisation you represent.

MR McCORMACK: I'm Jim McCormack from the Tasmanian Freight Logistics Council Ltd, a public company representing shippers and service providers to the logistics industry in Tasmania.

PROF SLOAN: Normally, we keep this very informal. What we find is most useful is if you start off with some sort of opening statement and then we can just have some questions and discussion.

MR McCORMACK: There are four parts to the comments I want to make. One is background on where we're coming from in having an interest in this particular review, the basis of competition for the services that are provided under Part X to Tasmanian shippers, the implications of the loss of that service, to which I'll refer, and how we see the proposed alternatives.

As far as background is concerned, we have to make the point that Tasmania is a tiny submarket of what is a relatively small market in global terms, being Australia and its access to shipping services, both inwards and out of the country. As a consequence of that, the competition is naturally going to be limited anyway in terms of servicing the Tasmanian market. Given that it is limited competition, any lessening of the competition is of grave concern, enough to have us take the effort to be part of this process.

The only service that we currently enjoy under the Part X provisions is a triple-A consortium who provide a regular weekly service between Tasmania and Singapore. It's a loop service from Singapore to Singapore that goes via all the major Australian ports but also comes to Tasmania, to the port of Bell Bay. The nature of the competition is with coastal services that provide the only other alternative to getting containers into international markets, and that is to tranship via Melbourne. So the coastal services trade carries the containers from Tasmania to the Port of Melbourne and then they're transhipped on to international services from Melbourne.

PROF SLOAN: Directly in containers?

MR McCORMACK: Directly, yes.

PROF SLOAN: Is there a container in Hobart and - - -

MR McCORMACK: There are four container ports, but the particular service is a weekly call at Bell Bay, which is emerging as probably the lead port for handling containers. The northern ports, as they are so-called, include Burnie and Devonport, which also handle limited numbers of containers but, for reasons of draught and the fact that there are three ports servicing the north of the state, the rationalisation has been to gravitate toward one. The one that is the preferred port from that point of view is so because of the weekly service which gets us direct to Singapore. It's via Fremantle, but it's still a direct service as far as Tasmania is concerned, because the containers aren't removed from the ship once they're loaded.

PROF SLOAN: Does that service go to Adelaide?

MR McCORMACK: It goes to Adelaide every second week.

PROF SLOAN: Right.

MR McCORMACK: On alternate weeks it goes direct to Fremantle and then on to Singapore, so it's only nine days to Singapore from Tasmania, which is faster than any transshipment via Melbourne, if you count the days to get prepared with the container and onto the ship that's leaving from one of those three Tasmanian ports.

PROF SLOAN: Are these mainly dry or reefer?

MR McCORMACK: There's a mix of both. The majority is dry, but the reefer cargo from Tasmania is still fairly significant and I suspect, without having the exact figures, probably higher than most other states because of the food production that occurs in Tasmania. Having said that, though, a large proportion of the food produced in Tasmania is sold on mainland markets, particularly Melbourne, Brisbane and Sydney, so cargoes that are containerised for those destinations are either in refrigerated trailers, because they're going to be trucked once they arrive in Melbourne straight into the various destinations, or they're packed in what we call domestic containers, which are a different dimension.

As I was saying to Gary earlier, that's principally because of the difference in pallet size. We have a square pallet in Australia that is wider than the standard international pallet, to the extent that Australian domestic pallets won't fit side by side in an international container - the standard ISO box - particularly a refrigerated one with insulated wall linings. As a consequence of that, shippers of international

cargoes really only have two effective choices. They tranship via Melbourne or they tranship via Singapore. If they're going to Malaysia, obviously they're directed into Port Kelang with the triple-A consortium as well.

MR POTTS: Can you give us some idea of what the proportions are that use the two different services?

MR McCORMACK: I can't give you accurate figures because the data is changing constantly. Tasmania is in a mini boom, to the extent that the Bass Strait trade in the last 12 months, in both directions, of the total trade comprised of something like 320,000 TEU, which was a massive jump on the previous year - which was in the order of 260,000 TEU - but that also includes motor vehicles. It includes a whole raft of non-containerised product, but the conversion to TEU is for the purpose of being able to compare apples with apples year-on-year, if you like.

As far as international containers are concerned, that weekly service typically has an exchange of between 3 and 4 hundred boxes, which means empties of the order of 150 to 200 coming in and being left for repack and uplift the following week. So that, multiplied by 50, would give you an idea of the proportionate amounts.

The problem with giving you accurate figures beyond that is that it's very difficult to distinguish between containerised cargo that's destined for export and containerised cargo that's destined for domestic markets. In addition, there's a significant volume of cargo that is packed in domestic boxes or trailers to get across to Melbourne, then it's unpacked and repacked into airfreight containers and airfreighted out of Melbourne. So there's a number of fairly complex supply chains at work just to get beyond Melbourne. But it's a reasonable size.

MR POTTS: But in practice the coastal shippers, if you like, do provide some effective competition into the consortia?

MR McCORMACK: They do indeed, but the consortium tends to be cheaper because of the efficiencies in the Port of Singapore for transshipment and also because the costs of the coastal component for people going into export is a fairly significant amount. We've had complaints from time to time from various exporters who argue that it costs the same amount of money to get a 20-foot container from Tasmania to Melbourne as it does to get it from Melbourne to the UK or North America or Japan.

That will vary, of course, depending on the shipper and the volumes that they're moving throughout the year and what kind of rates they can negotiate, but essentially the competition is between four coastal operators and the triple-A consortium, and that competition is probably more robust than it's ever been because

of the fact we have the government TT Line with their passenger vehicle ferry, but they also carry freight and they now operate a daily service. It changed the entire nature of the competition once that was introduced in September 2002.

Prior to that we had Toll Shipping - it was Brambles Shipping in those days, subsequently it became Toll Shipping - and Patrick Shipping carrying most of the trade and then in February of 2003 ANL came back into the market. ANL are a wholly owned subsidiary of CMA CGM, the French liner company, one of the top five container lines in the world. ANL have made significant inroads into the market there, and they are unique in that they offer a through-service to shippers even though there is still transshipment in Melbourne.

You can load your container on the ANL vessel at Bell Bay or Burnie and you don't have to worry about any other documentation. Once your export documentation is complete, the price you pay includes the domestic component, if you like, to compete with the other coastal service providers. There are four coastal operations and then there's the triple-A consortium, so shippers have very good choice at the moment.

PROF SLOAN: Without wishing to lead you, it sounds as though the increased competition has generated benefits for the shippers.

MR McCORMACK: There is no doubt that the retention of the triple-A consortium has kept a lid on prices. Clearly, the additional competition of TT Line and ANL has also affected prices, but the triple-A consortium have cleverly kept their rates just below the average total cost of going via Melbourne. I say "cleverly" because they could have introduced their increased rates much more rapidly, had they wished, and all they needed to do was say, "Well, we won't continue to call at Tasmania if people complain about the rates."

PROF SLOAN: How long has the triple-A agreement been coming down to Tasmania?

MR McCORMACK: I don't know exactly, but at least six years since I have been involved in the industry. I believe it existed prior to that, because the AAX service was also operating out of Hobart in 1999, the last time the Productivity Commission did a review of Part X. There were actually two consortiums that were operating in Tasmanian ports. The AAX service subsequently stopped going to Tasmania, principally because of the push to larger vessels. Even though Hobart has the deepest port in the whole of Australia, it is in the wrong part of the country, so the extra steaming to get to Hobart was an issue.

PROF SLOAN: Yes.

MR McCORMACK: For the amount of containers they were able to pick up, it just wasn't perceived as worth their trouble. The response was to rail or road containers to the north of the state and go out of the north via Melbourne or Singapore with the remaining consortium and the coastal services. The basis of the competition, which is really the crux of what we want to say, is that the triple-A service provides an alternate route to Asia and beyond via Singapore. It's a faster transit, at least to South-East Asian ports.

The nature of shipping, with the faster vessels and larger vessels and a lot of north-south routes from Australia now, is that they are making fewer calls. That means that with transit times to Japan, for example, which is a very important market for Tasmania - it's our number 1 export destination for food product - you can get there quite quickly now, even via Melbourne. Into South-East Asia, no-one can beat the nine days that it takes to get to Singapore, and a large volume of our fruit product, for example, goes into Singapore, Malaysia and beyond.

The other really important bit is the container exchange that I was referring to earlier. The cost of repositioning international containers varies dramatically if they have got to be brought from Melbourne. Because most of the southbound cargo is domestic cargo in domestic boxes, they can't be refilled with export cargo and sent out again.

One of the most important aspects of the competition is the fact that the triple-A consortium will bring in empty containers and make them available for shippers using that service the following week. Typically, as I said, we have between 100 and 200 containers off-loaded at Bell Bay. They are distributed around the state, packed out and ready for when that ship comes back. At certain times of the year, particularly the fruit season - the summer season, that we're coming into right now - some packers have to wait until more containers arrive and they repack on the wharf and ship out the same day, while the other containers are being unloaded and the new ones are being loaded. It gets down to that kind of tight turnaround situation, where the demand for empty containers exceeds what the vessel can actually bring at any one call.

That element of the competition is extremely important, because the only alternative is to reposition empty containers from Melbourne, and that always comes with a cost. I have had costs quoted as high as \$2000 for a 40-foot refrigerated container, which is adding almost the same price of shipping that container out full before they have even had access to it. The other thing that is really important, as far as competition is concerned, is that the existence of the triple-A consortium has produced, or has induced, the emergence of forwarders who are offering specialised services to consolidate cargo for LCL shippers. That has been very very important

for new emerging exporters who otherwise would perhaps not be encouraged to look for opportunities and to grow their business in export markets, purely because of the complexity of finding someone who can consolidate a couple of pallets of cargo as opposed to them filling an entire 20-foot container.

PROF SLOAN: I was going to ask you that question about how the smaller, maybe intermittent, shippers are accommodated.

MR McCORMACK: If they send their pallets to Melbourne, then they have to rely on someone who's remotely making decisions about how they are going to consolidate those pallets with other cargo. Historically, we've seen situations where their cargo waits in Melbourne for quite a number of days. The transit time, once the pallet has left Tasmania, has been stretched with LCL cargo to the extent that it opened up a market opportunity for providers to do consolidation work in Tasmania and, because they've got that triple-A consortium, they will consolidate with other Tasmanian shippers, send an entire container through Singapore and then arrange for it to be broken down and redistributed from there if it's going to different destinations beyond, because the choices and availability of services out of Singapore are huge, as we know.

PROF SLOAN: So they'd be handling that side of it too, those brokers and intermediaries - - -

MR McCORMACK: Yes. Those forwarders and brokers arrange for the entire shipment to destination on behalf of the exporter, but they have been more than shippers. They have, in fact, been the most supportive of what we've decided to do in presenting to this review.

PROF SLOAN: That's very interesting.

MR McCORMACK: From their point of view, their livelihood is dependent on that service being available and, obviously, there is behind that a whole lot of smaller exporters who are counting on being able to access a reasonably reliable service to the export markets they want to pursue. The competition isn't just on the basis of rates that might be struck in comparison to going via Melbourne.

PROF SLOAN: But those intermediaries and brokers, do they accept the list price of the consortium or do you think they try and negotiate?

MR McCORMACK: They're definitely negotiating, because they don't just do LCL cargo. It started incidentally to major shippers that they were representing and in both cases - of the two that I'm familiar with - they've got a core of larger exporters that provide them a livelihood, to the extent that they can afford to offer

this other service, which costs them more in terms of time and effort in preparing documentation and what have you to fill a single container. So their return perhaps and their margins aren't as good, but they can do it and they are fulfilling a service that is not otherwise available. It's certainly one that is important from a large number of shippers points of view.

MR POTTS: Has there been any pressure from the consortium to extend the arrangement to pricing?

MR McCORMACK: Not that I'm aware of. The council tends not to get involved in rates and pricing, for two reasons. One is we're not a shipping association or a shippers association - - -

PROF SLOAN: You're not a designated shipping body, are you?

MR McCORMACK: No, we're not a designated shipping body in that sense. There was a shippers' association that fell apart, because of the size of the market really I think. The other reason is that we believe quite strongly that shippers ought to be able to negotiate their own rates or do that via their broker or forwarder. We don't think it's appropriate to try and get involved in that. It's fraught with danger when a third party that doesn't have a direct interest in the exchange of a contract starts to meddle, if you like. We've deliberately avoided trying to affect rates, so I really don't know the answer to your question, but certainly the service is well patronised and it has grown in terms of the numbers of containers that are exchanged each call. It's obviously attracting the interests of enough shippers to justify its continued existence.

That leads me to the third point of what I wanted to say to open, and that is that, in speaking to shippers and others interested in Tasmania about this, there is no question in my mind that no-one really cares what the mechanism is to protect the retention of that service. That's what they really want. They want the service. Most people don't understand the complexity of Part X and what it means. It was a matter of me having to say to them that the implication is that if Part X is repealed and not replaced with anything else it may or may not result in the triple-A consortium saying, "Well, it's too hard for us to offer this service to Tasmania," and we lose it.

To be fair, we're not really arguing for retention of Part X any more and certainly, having read the draft report, I believe that what is in Tasmania's best interest is to have an outcome that encourages and supports the retention of the service from the triple-A consortium more than anything else. If a better result can be had through a different mechanism, then we would certainly support establishment of another mechanism. Whether it's the repeal of Part X altogether and directing lines to Part VII or whether it's a modification of Part X, what is in the best interests of

shippers is what we're caring about here and in their expectation it's what is the best thing that is going to retain the service.

PROF SLOAN: In that sense, it's the regular scheduled service that is the key, isn't it?

MR McCORMACK: Absolutely true. So it's a bit of a moot point - - -

PROF SLOAN: Would you like another one, or do you think that would be unrealistic?

MR McCORMACK: Look, extra competition is always a good thing, but there is the danger of losing - - -

PROF SLOAN: Well, maybe to another route.

MR McCORMACK: Yes, possibly. There is no question in my mind that the reason that, out of the top 10 export destinations for Tasmania and product, nine of them are Asian countries is because that's where we have easiest access in terms of shipping and airfreight services. Europe isn't a big export destination for Tasmanian product, nor is America, either North America or South America. There is virtually nothing going to South America from our state and it's because of the complexity, the cost and therefore the competitiveness of Tasmanian product in those markets. Particularly with food product, which represents half a billion dollars' worth of export out of 2 and a half billion dollars total, it's not surprising that it's all to Northern Hemisphere markets, because we're competing out of their season for the same sort of product. As a consequence, yes, more competition would be great, but if it's at the risk of the existing services it's always a worry, because in a small limited market - - -

PROF SLOAN: There are a lot of Part X agreements operating to and from Australia, and you've only got one of them.

MR McCORMACK: That's right. We are very conscious of the fact that this is really - - -

PROF SLOAN: Yes. There are ones that go up to North Asia, for example, which would be of interest to Tasmania.

MR McCORMACK: Definitely, and there are very good North Asian services now via Melbourne.

PROF SLOAN: Yes.

MR McCORMACK: ANL and the CMA CGM linkage is precisely one of them. The reason the French company retained ANL as a brand is because it was so well known in North Asia and Korea, China, Japan and Taiwan are such important market destinations for not just Tasmania but other food-producing parts of the country as well. We're just sort of making all these comments in the context that this is just a tiny part of what's going on and in the context of the fact that it is a very very limited market in Tasmania. We can't have too unrealistic an expectation of what we might be able to service in the future.

PROF SLOAN: But, Jim, you do seem to be sort of decoupling the issue of the regular scheduled service with the price, and it seems to me your view is that price is by and large for negotiation between the shippers and/or their brokers and the consortium.

MR McCORMACK: That's true, and it is important to decouple those two, because there are involved in that consortium six shipping lines and they are represented by five different agents in Tasmania. So it makes it relatively easy for people to get the price they want, and certainly that has been the case where people have chosen to use that service in preference to going via coastal services through Melbourne. Just to make one final comment, the only concern that I believe may exist with Part VII is the possible uncertainty of how long it might take to negotiate a position if the consortium were to go down that path.

I'm taking on board the comments in the draft report about possible extra costs and what have you. It may be something worth considering, to run a test case through that mechanism using an existing consortium and just to see if the six-month time limit, as proposed, would be adequate and if the process that's involved in gaining approval under Part VII is, indeed, appropriate for shipping services, because there are obviously two very strongly worded sides to that argument of using Part VII or not. We don't have a strong opinion but we do have a very very strong interest in the outcome if it has an implication for a retention of the service that we enjoy.

PROF SLOAN: We will certainly be following that one up.

MR McCORMACK: We really don't have a view of what it should be, in terms of the mechanism, but we do want a mechanism that works for us, I've realised by saying that.

PROF SLOAN: Thank you very much, Jim. That was very helpful and it's actually very useful for us to have the point of view of a more regional player.

MR McCORMACK: Thank you.

PROF SLOAN: Thank you very much for coming over and thank you for the thought you've put into your presentation. We might just keep going, if that's okay, and we'll have a break after Frank's presentation.

PROF SLOAN: This is Frank Beaufort, who is president of APSA. I don't think I need familiarise you with our processes, Frank.

MR BEAUFORT: Not really.

PROF SLOAN: We have allocated three-quarters of an hour and normally I think it's quite a good idea to allow you some time to give us a presentation of your main points and then we can have some questions for discussion.

MR BEAUFORT: Fine. I have no problem with that. For the record, my name is John Francis Beaufort of 19 Maple Crescent, Camberwell in Victoria. I represent the Australian Peak Shippers Association, or APSA in brief. APSA is a designated peak shipper body under Part X of the Trade Practices Act 1974 and represents Australia's line of shipping exporters generally. I'd like to make a statement.

PROF SLOAN: That would be absolutely fabulous, Frank.

MR BEAUFORT: Australia is a nation of shippers and the interests of Australian shippers must be balanced against the interests of foreign carriers. It will never be more than a happy coincidence if the interests of foreign carriers and shippers are the same. There is no doubt that Australian exporters are a diverse group who are largely uncoordinated and who are direct competitors with each other in their foreign markets.

On the other hand, the carriers have considerable power through their conference arrangements, which have enabled them to develop an international overview of shipping arrangements and is the means by which they coordinate their conduct in dealing with Australian shippers. In other words, the carriers are in a powerful position and with this in mind the imbalance in their favour needs to be addressed towards a more balanced position.

APSA supports the retention of Part X, with a number of major amendments. This involves the retention of the protection given to exporters in particular under sections 10.29, 10.41 and 10.52. In our view, Part X is fundamental to the continuing success of Australian exporters in ensuring that carriers participate in negotiations with exporters; all Australian exporters have access to exports markets; carriers are not able to disregard the interests of exporters; carriers have to provide information to exporters; and carriers are able to form alliances.

APSA believes that the removal of Part X exemptions from Part IV would serve only to take away the powers of export bodies which have been so important in formulating stable shipping services, destabilise current shipping services which are vital to the continuance and furtherance of Australia's export drive, hinder the

development of forward marketing strategies by industry and promote domination by major lines or strategic alliances in Australia's export trades. Ships are mobile assets with high fixed operating costs. Left purely to market forces, carriers would concentrate on lucrative trades and abandon the not so lucrative ones.

In summary, APSA does not believe the authorisation process would provide an environment as predictable or as efficient as the Part X process and Part X should be retained. In calling for Part X to be retained, its principal objective should be to facilitate efficient coordination and joint provision of liner cargo shipping services within a pro-competition framework and to assist Australian exporters and importers to have access to liner cargo shipping services of adequate frequency, geographical coverage and reliability of freight rates that are internationally competitive. Thank you.

PROF SLOAN: Thank you very much. We might pick up a bit more about some of the changes that you've been discussing in relation to Part X. I think there are some quite substantive points there. I guess I'd like some other views on this during the course of the next few weeks. There seems to be a kind of dilemma in what we've observed; that is, the notion that because Australia has these long thin routes we need to tolerate these potentially anticompetitive agreements - I'm not saying they are all anticompetitive agreements - lest the service not be provided at all.

When we've had a look at the data, it seems that in fact the longest and the thinnest of the routes are not full of Part X agreements but are often just actually undertaken by independents. The routes which would probably be least described as long and thin, in fact, have a whole lot of agreements, including discussion agreements. Do you have any thoughts about how I would resolve that dilemma?

MR BEAUFORT: I know that you made your comments about the long and thin trades in the report. The fact is, we had to encourage lines to come here first, to get involved in these global networks. I think that's where we differ with your views that the services are no longer long and thin. Some of them are, of course, long and thin. Our trade is very small, comparable with Europe and the USA. It has been our main role, in continuing to encourage lines to service Australia, and I think APSA and its predecessor have done it very well.

PROF SLOAN: The point I'm making is that I accept that some of the routes are long and thin but, in fact, those ones are the ones that don't have Part X agreements; they are actually just serviced by independents. So you are kind of getting a counter-intuitive empirical atlas.

MR BEAUFORT: Europe and USA are not - - -

PROF SLOAN: No, but I don't regard them as - - -

MR BEAUFORT: You don't call them long and thin?

PROF SLOAN: Not compared with Africa and South America, no.

MR BEAUFORT: Africa and South America are minuscule in our business.

PROF SLOAN: Yes, that is so. Anyway, we'll keep that one bubbling along because I'd like to know the answer, really. Can we just talk about this issue of minimum service levels and the extent to which APSA is really involved in negotiating? I think you took some exception to our conclusion on this.

MR BEAUFORT: I did; a strong exception - - -

PROF SLOAN: Yes. Fine.

MR BEAUFORT: - - - to the fact that we just simply accept the proposals that are put to us. As I put in my response to the draft report, early in APSA's times, prior to Shipping Australia Ltd, we had an organisation called Liner Shipping Services. APSA was formed in November 1990 and in 91 we reached agreement with the Liner Shipping Services that when they put forward a proposal for a minimum level of services with each agreement they would have to provide us with certain data so that we could assess whether the proposal they were putting forward was adequate. That is what happened in 91.

Ever since, we've been provided with that information automatically - we don't have to ask for it; automatically - by consortiums, alliances, whatever, to go along with their proposal before their agreement is registered. It has worked very well. In 90 per cent of the cases, the minimum levels of service proposals they are putting forward to us we assess as being adequate or not and in nearly all cases, when we've done our mathematics, they are.

The only ones where we have to negotiate are those services which are not managed by SAL and are perhaps new to the trade. We've just finished negotiating with one of those organisations called Rhia and ANL to the Pacific Islands. They met with us, and we had to provide them with information and they had to provide us with a lot of information. Ultimately, we reached an agreement and the proposals have been put forward for registration.

PROF SLOAN: There has sort of been baseline negotiation at some stage in the past.

MR BEAUFORT: Early on, yes.

PROF SLOAN: We shouldn't have used the adverb "simply".

MR BEAUFORT: Exactly. We've assessed something like - - -

PROF SLOAN: If where you say, "In some 90 per cent of cases, APSA accepts the minimum levels of service offered by the carrier - - -"

MR BEAUFORT: Yes, and 10 per cent are negotiated.

PROF SLOAN: You think the interpretation we've placed on that - - -

MR BEAUFORT: I think your comment that we simply accept what they put forward is not true.

PROF SLOAN: It's probably the "simply" that was - - -

MR BEAUFORT: The word "simply" probably got up my nose.

PROF SLOAN: Yes, we get that. Maybe it's our training, but we look at some of the empirical things. It looks as if the minimum service levels are often quite a low percentage of what's actually offered.

MR BEAUFORT: 80 per cent of.

PROF SLOAN: We are worried that, therefore, what are these Part X agreements? If it's only quite a low percentage of what's actually undertaken, what's really being offered here?

MR BEAUFORT: I'd call 80 per cent - - -

PROF SLOAN: We, of course, have found quite a significantly lower figure and we need to get to the bottom of what the real figure is.

MR BEAUFORT: We know what the real figure is, what the maximum is, because that comes in - - -

PROF SLOAN: Do you see my point? All they are offering is really quite a small percentage.

MR BEAUFORT: It's not small; 80 per cent is not small.

PROF SLOAN: No, I agree; it depends on what it is. My view is that the benefits to the shippers and, therefore, the Australian community at large look quite small.

MR BEAUFORT: We get minimum levels of statistics on a quarterly basis from several organisations. In every case, in all the years we've been receiving those statistics, the space provided has well exceeded the minimum. I think it would be unreasonable to have the maximum - - -

PROF SLOAN: I accept that, but the guarantee to minimum service levels looks rather trivial, really. Did you want to comment on this?

MR POTTS: I wanted to, if I could, and it's a related question. When we met with Shipping Australia in Sydney last week, they emphasised that an important aspect of the Part X arrangements was that there was an ongoing monitoring process to ensure that the arrangements are in the public interest, that they are economic, efficient and fair. Could I get your perspective on how that works, from the perspective of the exporters and the shippers, how you feel that you ensure, on an ongoing basis, that these arrangements are in the public interest.

MR BEAUFORT: I can only talk about exporters, of course. I have no idea what the importers do as far as minimum levels of service are concerned. I fail to come to an idea of who is the "public interest" in the export business. I can understand in the import business that, in fact, the shoppers who are buying the imported goods are probably the public interest. But who is the public interest in the export trade? It's a question I have to ask. Who is it? Is it the staff who work for the exporters, so they've got a job? Who is the public interest in the export business?

MR POTTS: Even if they are the exporters - and you represent the exporters, or a group of exporters - can you explain for us how you go through that process to ensure on an ongoing basis that these arrangements remain in the public interest?

MR BEAUFORT: I ask you again, who's the public interest? Surely, the exporters and their staff have the interest. I'm sure the man in the street has no interest. I mean, it's different for the importers. This is one of the things in the draft report where you regularly refer to "shippers", when there was a quite strong differentiation between importers and exporters in international shipping requirements.

We monitor what's going on in the export business all the time. We meet with the lines consortia regularly - often unofficially, informally, but quite regularly formally - and a representative of the Minister of Transport is there to make sure that what's been negotiated is a fair outcome. As I say, we represent exporters generally, and the minister's representatives make sure that exporters are getting a fair go.

PROF SLOAN: Of course, the importers are now there explicitly in Part X, so we do have to take them into account.

MR BEAUFORT: Sure.

PROF SLOAN: There is a further point of view, which is that, if you look more generally, users in regulated industries generally are not very well placed to see the costs of regulation. If you go and have a survey of users of taxi services, they don't necessarily understand what the impact is of the anticompetitive arrangements in that industry, so it's important for bodies like us to be scratching the surface and asking the question, "What is the public interest?" because it may be something slightly different from what the current exporters perceive to be in their interests. I think that's probably the point that Gary is trying to make.

MR BEAUFORT: What we negotiate and monitor is always on behalf of exporters I mean, I don't have any cargo, so it's not mine - and they're the ones to make sure they're getting what they want. The thing that's made very clear, and often, to me is that they have good frequent reliable services now, which they mightn't have got five or seven years ago, at rates which are internationally competitive or, even better, rates that that trade can bear. In all the dealings I've had with our members since the review came up, that is an important point that people need to think about; that it's the certainty of frequent reliable services to all major ports, at rates that cargo can bear. That applies to exporters; I can't talk about the importers.

PROF SLOAN: Just on that point, it's quite interesting - because we've had Jim from Tasmania and, of course, you know that I come from Adelaide - that one of the advantages which is put forward for the Part X agreements is that they provide regular scheduled services with multiple port calls, but it is certainly true in Adelaide that from time to time they've simply been culled from these agreements.

MR BEAUFORT: Been?

PROF SLOAN: Culled, just blocked off.

MR BEAUFORT: Yes.

PROF SLOAN: That, to me, is quite an important issue, because if one of the benefits of, in effect, tolerating what in other industries would not be tolerated on the basis of these guaranteed multiple port calls for a port which is not completely insignificant, for Adelaide - okay, it's a little insignificant - to be simply arbitrarily culled from time to time from these agreements seems quite a serious issue. I know why they do it - because there's not enough volume - but that sounds like the market to me.

MR BEAUFORT: There are two instances; there's the American trade and the North Asian trade. The Americans weren't in that trade for many many years until a couple of years back, when they went there on the promise of additional cargo, and when they got there the cargo wasn't there. It happened to coincide with charter rates going up, and they decided they couldn't continue. That's a market situation.

PROF SLOAN: I agree. But, Frank, the shipping lines tell me that one of the wonderful advantages of the Part X agreements is that they will go even if the cargo is relatively small. But you're telling me that that's not really true?

MR BEAUFORT: I mean, they do call at Adelaide in most trades still.

PROF SLOAN: Yes. Sorry to interrupt you. Keep going.

MR BEAUFORT: Yes. I don't think that's quite right, what you're saying the shipping lines have said. What the shipping lines have said is that they continue these reliable frequent services even though the cargo may not be there. I don't think they've said that they will call at every port even if there's no cargo there.

PROF SLOAN: No, they will sail if they're not completely full.

MR BEAUFORT: It's a worldwide trend in all continents that a number of ports are being culled. I don't believe shippers are disadvantaged in Adelaide by having to come through Melbourne. Rail rates are pretty competitive. They've got daily frequencies into North Asian markets and almost daily into the US, which they couldn't have got out of Adelaide. They always like to have their own shipping line. Tasmania is still comfortable with the triple-A service. I'd be concerned that, if Part X disappeared, triple-A might disappear too from Tasmania. That would be a real worry, because the cost of crossing Bass Strait is not cheap. I think your understanding of what the shipping lines said probably was misconstrued perhaps.

PROF SLOAN: We'll have to go back on the transcript.

MR BEAUFORT: I think what they've said is they have to provide reliable frequent services at all these major ports, even if the cargo is not always there.

PROF SLOAN: Was there another point you wanted to make on this one?

MR BEAUFORT: I was going to say that the market is what establishes these changes, and also the total cost and the frequency of service is important for Adelaide shippers. As I say, I don't believe they've been disadvantaged by having to come through Melbourne. They'd like to see ships lined up down the river, but - - -

PROF SLOAN: I guess we all would. Did you want to go onto another topic?

MR POTTS: Yes, can I go onto another topic, Frank? One of the points you make in your submission, I think, is that if Part X is taken away then the shipping lines, in particular, will revert to establishing arrangements overseas rather than going through an Australian based mechanism. Could you elaborate on that point for me, why you think that would happen, particularly when you look at Europe, for instance, where certain types of agreements are not allowed, like discussion agreements, and yet European carriers, even though they could perhaps use another jurisdiction to have a broader-ranging agreement like a discussion agreement, don't seem to go down that route. You think they would in the case of Australia, but not in other areas.

MR BEAUFORT: I think one of the things I'd say is that, in my view, you can't compare international registered companies with domestic industries. Although the ACCC has powers over the domestic industries, I'm not sure the ACCC or the Productivity Commission has the same powers over companies which are headquartered in London, Tokyo, Bangkok, Singapore or whatever. They obviously get a great deal of comfort working under Part X. They know there are rules and regulations and that we have countervailing powers.

I don't see really why shipping lines would bother to take up the authorisation process if life was going to be made very difficult, and they do their dealings offshore and would service Australia as independent lines, over which you'd have little power. That's my fear. I've got nothing to establish those fears on, it's just a fear that I have. I've been in this business 54 years and I've seen some of these things happen, and they haven't been very satisfactory, where lines do dealings offshore and you know nothing about them. So it's a fear and concern that - - -

MR POTTS: So you're saying that even under the current arrangements, the Part X arrangements, which are very liberal in terms of being able to establish agreements, the lines nonetheless are doing agreements offshore, which you think are to the disadvantage of your members?

MR BEAUFORT: At least we have access to the lines, they have to provide a lot of information, we have countervailing powers and all those sorts of things. I don't think they would apply under the authorisation process. I mean, a conference could be authorised to operate as a conference, but what else would they be obliged to do?

MR POTTS: But I thought you were saying that even now or in recent years, in past years, there have been cases where the lines have been doing agreements - setting up arrangements offshore - despite the fact that a Part X arrangement exists in

Australia.

MR BEAUFORT: I'm sure they do, but we have these countervailing powers under Part X where we can access the information we want to get generally from them. If they come to see us about negotiating tariff rates, they have to provide a lot of information to try and justify increases in those rates. Would we have access to that sort of information if they became an authorised conference? These are the sorts of things that have to be considered. We get a lot of information quite freely provided to us under Part X which I don't believe we would get access to in another environment.

PROF SLOAN: What is the value of that information to individual shippers then?

MR BEAUFORT: We have the powers to negotiate the tariff rates which are the ceiling rates, which are not as important as they were, because in a lot of trades these days the market rates rule the day, but they still provide a ceiling for those very small shippers who wouldn't know where to start if they had to ship some goods and go along to a shipping line agent and say, "What's the price to Hong Kong?" They now have the tariff, which is a guide for them. Without any of those guides, heaven knows what might happen in the way of rates to some of these smaller shippers. The people we really look after are the small to medium shippers, not the - - -

MR POTTS: I guess that was going to be my point. In a market that's operating properly, if a small exporter finds they don't have sufficient power to negotiate with a shipping line, then you would expect an intermediary would develop to provide that service to the small exporter, which is what you were going on to say, I suppose.

PROF SLOAN: Which is what we heard was happening in Tasmania.

MR BEAUFORT: Yes, in the USA too. When OSRA was established in 98, it was established by the NIT League, who represent all the big shippers in America, and the smaller shippers were left to fend for themselves. Eventually - it took them nearly two years to do it - they formed shipper groups, who then had some tonnage to offer to the lines and get some kind of a better deal. That would probably happen here, but it's all in the unknown, isn't it? The big thing people tell me these days is that we must have this certainty which we have today, not left to the unknown.

PROF SLOAN: Companies in lots of industries would like that too.

MR BEAUFORT: Domestic industries.

PROF SLOAN: All sorts of industries would like it too, but whether the law should be underpinning that is a different issue, I think. You do have some concerns,

though, with how Part X has emerged, don't you? You're critical of the emergence of the discussion agreements and how they have operated?

MR BEAUFORT: I don't personally, but a couple of our members do. For example, the horticultural shippers have a great problem with negotiating with discussion agreements, because they find it quite pointless dealing with an organisation or a group where anything that's agreed is non-binding, and really it's an agreement when you don't have an agreement. They'd rather deal with the particular lines in any trade direct, but what happens is the negotiations start off with the trade presentation group - TFA or one of those discussion agreements - and anything that's discussed or agreed at those meetings filters down to the traditional conferences, which means the real negotiations have been mucked about with by whatever has been learnt at the discussion agreements.

Before discussion agreements came in, we had very good arrangements - for example, in the South-East Asian trade - with the three conferences, and I think a lot of people would like to get back to that situation right now.

PROF SLOAN: Apart from the sort of wrestling with the piranha, with the discussion agreements not producing binding outcomes in negotiation, is it also because they constitute a high market share on certain routes?

MR BEAUFORT: They do, and it means that any sensitive information you might provide to one of the members of that consortium can be passed along all the members. There's no doubt they are - - -

PROF SLOAN: Do you think that happens?

MR BEAUFORT: I've got no evidence, but why not? It has been quoted many times by different people, but it is an anticompetitive regime, there's no doubt about that, when you get all the groups, for example, in South-East Asia. Since we put in our original submission in August, I think there has been some further thinking by some of our members about discussion agreements, whether they should be totally abandoned or whether there's some form of arrangement which could prove them more competitive than the current situation. I haven't got an answer to that at the moment.

PROF SLOAN: Right.

MR BEAUFORT: Our people are still talking about that, and hopefully we can get something to you by 17 December.

PROF SLOAN: That would be excellent, Frank.

MR BEAUFORT: That's all I can say at the moment on discussion agreements but they have upset various people. Of course, the Europeans don't like them, but I don't want to get involved in what the Europeans like or dislike. It's a different regime again.

PROF SLOAN: Because there is quite a lot of concern too amongst your members about the surcharges.

MR BEAUFORT: A great deal of concern.

PROF SLOAN: That seems to be a kind of dilemma; we might have countervailing power to negotiate the blue water rates, but if all these surcharges are getting slapped on for various reasons doesn't that undermine the whole point of the exercise? They seem to have surcharges for bad weather - - -

MR BEAUFORT: I know what you're saying.

PROF SLOAN: Then they have surcharges for good weather.

MR BEAUFORT: Yes. For example, with the south-eastern trade, the total of surcharges is way above the actual freight rate.

PROF SLOAN: And that's a lack of certainty for your members, isn't it? They don't really know what price they're up for until the surcharge information comes.

MR BEAUFORT: Yes. The surcharges have increased over the years too. I mean, once upon a time there were no surcharges. Lines seem to believe that they can just impose a surcharge. The outwards terminal handling charge is a good exercise, which came in in June 2000. We had 10 of our members sit down with them; they kept stating our opposition to them. The minister's representative was there and, no matter what we said, they were imposed a couple of months later.

So we endeavoured to either reject them or negotiate them. In most cases, they've been imposed. What we'd like to see is have them incorporated into freight rates, except in an emergency situation like the bunker problem we've had recently. That would be accepted as an emergency situation. The war insurance surcharges to the Middle East would be another one, but there's a whole list of surcharges coming in.

PROF SLOAN: It seems to me that's clearly an anomaly of Part X as it has developed but, in a sense, the shipping lines have sort of got around - - -

MR BEAUFORT: It is. I have to accept that. But how would that be different under the authorisation process? How would it be improved?

PROF SLOAN: It's probably likely that any price fixing or price setting wouldn't be approved under a Part VII agreement, so that would be a difference.

MR BEAUFORT: Price fixing as such, but there could be cases for surcharges which the lines will bring.

MR POTTS: I guess the question is whether it's realistic to expect you can have price fixing in a modern commercial environment, particularly with changes in the demand and supply positions and the like. It's unrealistic to expect that you can predict prices with sufficient accuracy to have a price-fixing arrangement that's going to remain in place for a year or two, for instance. This just seems to me to be a way of getting around a regulatory arrangement in order to move towards a more market based one.

MR BEAUFORT: Can I separate freight rates from surcharges, because as far as freight rates are concerned it wouldn't worry me whether tariff rates disappeared altogether, but there are four groups I know of and they are horticulture, wool, cotton and I think there's another one which require a type of tariff rate so that they can negotiate on behalf of all their members, because some of these groups have members who have no idea where to start negotiating. They could be called an industry group rate rather than a general rate. At the moment, we have general rates and tariff rates. For example, in the US trade there are thousands of them. Very few of them are used, because people with any marketing power or negotiating power can always get better.

Certainly, most people are only charged market rates. So a lot of the price fixing could be taken out without any concern, but surcharges are a different exercise. There are no cases in the tariff arrangement for freight rates where they're imposed. They come and see us and we reach an outcome, but the surcharge is a different environment.

PROF SLOAN: What's your view on statutorily-imposed confidential individual service contracting? Would that be a step forward?

MR BEAUFORT: I'd have to think about that one.

PROF SLOAN: Yes. I mean, you're saying there are obviously a lot of negotiations going on at the moment.

MR BEAUFORT: A lot of people would like to have, as a rule, confidential rate

agreements. There's no doubt about that these days. People have got more tonnage and more important customers to the lines. Confidential freight agreements, as is in the US, would certainly be a plus.

PROF SLOAN: The point I'm making is that it might be a help if the statute imposes that confidentially, because you could probably always have a bit of a common law stoush with your shipping line, but it's probably not a good look. So there probably is a case for the statute.

MR BEAUFORT: Yes. I'd have to have a think about that one.

PROF SLOAN: Okay, Frank.

MR POTTS: You do mention it in your submissions, though - in the supplementary submission - that individual shippers see benefits in having access to confidential rate agreements.

MR BEAUFORT: Yes, whether they're statutory or something else.

PROF SLOAN: You've been around the traps a long time, Frank, and I wonder whether - and I know there's a certain frustration, even though the shipping lines are required to give you some information, but they hold some cards close to their chest - you get the impression that the shipping lines make good money by coming to Australia and servicing the Australian trade routes.

MR BEAUFORT: You probably know that the trade fluctuates heavily, and in recent times China has influenced what's happening on the southbound trade, as it has in every trade from China. As long as China continues to increase its export trade by 9 per cent a year or whatever, I think the import trades are going to have to live with reasonably high freight rates, but it's not so long ago when the rates were unsustainable southbound into Australia. There's something like a 15-year peak, where you go from peak to peak in rates and what happens is that they will always trough out at one stage. But then the rates get to totally unsustainable levels, which shippers have to accept, and the lines then push to get rate increases.

The momentum then is for rates to increase and then, as they're increasing, the shipowners go mad and order 50 new ships. When you get to the peak and all these ships come out, then the rates go down again. That's happened since the Second World War; not just containers but the open market. That's what happened and we've got this current environment at the moment where there's something like 750 new container ships - only container ships - being built or under construction. So there will come a time when rates - even southbound rates - will come down again.

PROF SLOAN: Of course, cycles are very common in all sorts of industry.

MR BEAUFORT: Yes, sure.

PROF SLOAN: What I'm interested in is do these shipping lines make adequate returns on capital over the cycle? I guess you partly answered, because you're telling me they invest heavily in new ships, which I guess they wouldn't do if they weren't earning adequate returns.

MR BEAUFORT: I wouldn't say that. I think they're masochists myself.

PROF SLOAN: So they're run by silly people; is that what you say?

MR BEAUFORT: No, they get overoptimistic, I think. What happened not too long ago is that we were asked to meet with the European conference, the AELA, on increases to tariffs to Europe. We sat down with them and the minister's representative was there and we had a good outcome. They, in fact, got a two-part total \$US500 per container increase to Europe. One of the reasons we gave them that was because, when the rates changed to US dollars from Australian dollars in 2000, there was an agreement that the rates would hold firm for some considerable period. Then we agreed to meet with them again. We had to accept that when they put the new fleet of ships in, these 4100 TEU ships, there was an extremely large outlay in capital and the rates were what we considered to be low and we therefore negotiated an agreement.

At the same time, as part of the negotiations, they want to re-introduce a currency adjustment factor, which was taken out of negotiations prior to 2000. We said, "You know, once you go to US dollars" - and at least 60 per cent of their costs are in US dollars - "we will not accept a currency adjustment factor." So we were able to negotiate that out in negotiations, but we gave them an increase because we believed an increase was necessary. That was just the tariff rate. The bigger shippers are getting something better than that.

PROF SLOAN: I guess the sort of bottom-line point I'm making, though, is that if we assume that the shipping lines are making an adequate return on their capital and they make money by coming to Australia why wouldn't you conclude that they will continue to come to Australia, which is, in fact, the point made by one of your members, the Western Australian Shippers Council. Their view is that as long as shipping lines will make money coming to Australia they will continue to do so, irrespective of the regulatory regime.

MR BEAUFORT: I'm sure they will, but they mightn't provide the service we're getting today. That's the big unknown, as I keep calling it. Would Tasmania

continue to be serviced? I doubt it very much.

PROF SLOAN: Or Adelaide.

MR BEAUFORT: We've had a great deal of difficulty in encouraging the lines to keep servicing Tasmania. They want to just service the main ports and try and ship everything through Melbourne, part of the minimum levels of service thing.

PROF SLOAN: Except it sounds as though the cargo load down there is increasing quite dramatically, so wouldn't they be crazy not to be servicing it?

MR BEAUFORT: I'm not sure "dramatic" is the right word, but it has been increasing, yes.

MR POTTS: If these arrangements are so clearly valuable, as you're saying, then it shouldn't be too difficult for the parties to demonstrate the benefits to the ACCC under a Part VII arrangement; if it's so clear-cut in your mind and we've heard it's clear-cut in the minds of Shipping Australia.

MR BEAUFORT: Unfortunately, the ACCC has not got a very good record in international shipping matters and, in the four or five investigations we've been involved with them, they have not resolved any complaints. So I'm not quite sure whether they would deal with that situation adequately or not.

Look around the world to see the number of ports that have been cut out - been culled, if you like - to increase the services. That's what everybody wants these days, fast services. Shippers are selling on a just-on-time basis. They need their frequent reliable rates, services at rates that the trade can bear. Part X gives it to them, the certainty. They certainly don't want to change for some regulatory reason.

PROF SLOAN: Is there any final comment you'd like to make, Frank?

MR BEAUFORT: We've been concerned about the powers of stevedores.

PROF SLOAN: Yes.

MR BEAUFORT: They have, from time to time, negotiations with shipping lines, obviously - the conferences - and we've some concerns that shipping lines accept rates which have been accepted because they can pass them on. That might not be quite true, but the fact is that we would like to be involved in the negotiations between stevedores and shipping lines, just to see what goes on. The stevedores have totally rejected our approaches in the past, because they say, "You're not the client, the shipping line is the client. What they do with you is something between

you and the shipping line."

PROF SLOAN: That is underpinned by Part X, of course, that - - -

MR BEAUFORT: Yes, and we would like to be able to have access to the negotiations of the stevedores and the shipping lines. I'm not sure how we can do that, but they are companies with significant market power, and that's the thought. The ACCC has been having a bit of a barney with Chris Corrigan recently. I'm not sure that all of it's justified, but the fact is they are very powerful. We really only have two stevedores in this country operating as a duopoly, and it has always been a concern of mine.

PROF SLOAN: All right. Thank you very much, Frank. In a minute, we'll just have a break for a couple of minutes.

MR BEAUFORT: We would probably like to put in another submission between now and 17 December.

PROF SLOAN: That would be great. We'll still be working till Christmas, or they will.

MR BEAUFORT: Okay.

PROF SLOAN: Okay, there's just a cup of tea and coffee. We'll just have a few minutes.

PROF SLOAN: If you could state your name for the record, that would be a great help.

MR HEINZMANN: My name is Fritz Heinzmann and I represent AFIF, the Freight Forwarders Association.

PROF SLOAN: Fritz, would you like to just make a presentation before we start. Just give us your position.

MR HEINZMANN: I'm actually the newly elected chairman of AFIF. That happened last week.

PROF SLOAN: Congratulations.

MR HEINZMANN: This is my first official function. We submitted in July and, of course, coming from the freight forwarding industry, these issues are too complex for us to go into what sort of details. I just want to represent the interests of our industry.

PROF SLOAN: Yes. Did you want to just state in broad terms what your position is?

MR HEINZMANN: Precisely. We come from the angle that there would appear to be changes in the air. That's what we think is happening, and we were concerned when there was an absolute deterioration in the freight trades some years back, where the bottom dropped out of it and there were no checks, nothing. It just happened and went deeper and deeper, and now we have the reverse situation, specifically from Asia. Again, there are no checks and balances, or there appear to be no checks and balances. Nowadays, in 1999, nothing really happened. The market took care of the freights coming back up again, and we have now a situation where the market seems to be able, further down the track, to bring the rates down again, but at the same time the government is stepping in and saying that something has to be done.

From our angle, there's change in the air in Europe and in North America, and I think - that's my personal opinion - for Australia to take any step ahead of any development in those markets is borderline unnecessary, because of the massive trade in those lanes.

PROF SLOAN: You're pointing to what, from your point of view, have been quite wide swings in prices in the last five years.

MR HEINZMANN: Precisely, yes.

PROF SLOAN: I think it was true to say that in 1999 the rates were low and probably even seen as unsustainably low.

MR HEINZMANN: Unsustainably low, yes.

PROF SLOAN: We've had some spikes since that point.

MR HEINZMANN: That's right.

PROF SLOAN: It's a conundrum for us, because in one way we're told that Part X might be able to provide greater rate stability than might otherwise be the case, but we seem to have had some quite wild swings in the meantime. Is that an unrealistic expectation for a regulation? Is it the market that's essentially determining these?

MR HEINZMANN: What occurred to us is that in 1999 nothing happened. No regulatory instrument was used to arrest the freight rates dropping through the floor whilst we have now a situation again. The high levels of freight prices are obviously driven by Asia. Now something is being done about it, and we sense that and consequently we have an interest to make sure that we (a) know about it and (b) can do something to influence the narrow sector that affects our industry.

PROF SLOAN: Can we just take a step back? Can you describe the kind of businesses that your association represents? They're international freight forwarders.

MR HEINZMANN: We're international freight forwarders, mainly involved in general cargo, not in bulk cargo. To a lesser degree, some of us are involved in agriculture but not that much. It's manufactured goods.

PROF SLOAN: But mainly going out in containers.

MR HEINZMANN: Container traffic, yes.

PROF SLOAN: And for the export trade.

MR HEINZMANN: There's a concentration on import trade, because there's more general cargo being imported than exported.

MR POTTS: By and large, you're representing smaller companies.

MR HEINZMANN: It's a mix. The freight forwarding business in Australia has some quite large companies involved; not in Australia, but their parent companies are large companies.

PROF SLOAN: No, we mean your clients. The clients of Freight Forwarders are generally smaller shippers - - -

MR HEINZMANN: Smaller shippers, precisely.

PROF SLOAN: - - - because the bigger shippers can - - -

MR HEINZMANN: The bigger shippers make these directly.

PROF SLOAN: Yes, so you often are, essentially, aggregating.

MR HEINZMANN: That's right, but that's more on the export. On the imported, even the large businesses are quite often controlled by the freight forwarders.

PROF SLOAN: Is that because the importer would not see the actual game of importing as their core business?

MR HEINZMANN: Coles Myer from Asia would, of course, make their own deals. That type of importer has its own deals, but in the European business we do have larger accounts.

PROF SLOAN: Is one of your roles then to negotiate with the shipping lines in terms of freight rates and the like?

MR HEINZMANN: Precisely, yes, which is another point. We don't want to have a situation where all negotiations disappear overseas, because there are some negotiations left here specifically on export. The import rate tends to be negotiated overseas. Our company negotiates in Singapore, in Hong Kong, and then, of course, back in Europe.

MR POTTS: But if you just take the export side and look at the different routes, you have got different types of agreements on the routes. On some routes you just have consortia, which are about scheduling and those sorts of things and not to do with price, and on other routes you'll find that there are conferences which include tariffs and price-setting arrangements. From your point of view, and the point of view of your clients, does it have very much impact on how you operate, whether the agreement includes price-setting arrangements as well as scheduling and capacity setting?

MR HEINZMANN: We tend to try to negotiate with an individual shipping line.

MR POTTS: Regardless of whether - - -

MR HEINZMANN: Regardless of whether they belong to a consortia, so that we combine the two things; good economic pricing and, of course, reliability and - - -

MR POTTS: Is an implication of that that price setting is not really necessary as part of an arrangement for your organisation and your clients to operate effectively?

MR HEINZMANN: It's a combination. Reliability on manufactured goods and reliability of services is important. Of course, the price cannot go through the roof.

PROF SLOAN: But that's the negotiated price with the shipping line as opposed to whatever rate is struck at the consortium level.

MR HEINZMANN: Yes.

PROF SLOAN: So that's a combination. I guess what you're offering to your clients are regular scheduled services, or regular services, at a competitive price or the best price you can get.

MR HEINZMANN: Yes.

PROF SLOAN: Is there a difference between importing and exporting? Is there not an issue for importing that they are very sensitive to the shipping costs or do you find all - - -

MR HEINZMANN: Between import and export, there's an immense difference.

PROF SLOAN: Would you like to expand on that?

MR HEINZMANN: Our business is controlled on importing, and that's the company I represent more than AFIF. The method we employ is that we negotiate with one particular line, and we may negotiate with that particular line quantity agreements over different trade lanes. We then provide a certain throughput, and if we fall short in the throughput in one particular lane we may compensate that with an input in another lane. That way, we achieve some sort of levelling out on the whole exercise.

If you fall short from Australia, we may increase with that particular line the tonnage out of Hong Kong or whatever. That gives us this 12 months stability in the pricing - not in the surcharges but in the pricing - and those particular aspects. That's working very well and, of course, we don't want any change or necessarily drastic change to that. The difficulty with the legislation is that any of that is being affected by legislation and then contained or interfered with.

PROF SLOAN: I just need to get this right, I think, because in our visits we heard one of the frustrations was that, if you're an importer - and, say, an importer destined for retail - you have to basically set the price a long way ahead and often it will involve catalogues and the like. Therefore, you essentially bear the costs of any variation in the transport costs, including the slapping on of surcharges and the like.

MR HEINZMANN: Yes.

PROF SLOAN: Whereas, depending on the particular export market, there's always the chance that you might be able to pass on the increased transport costs in an export market.

MR HEINZMANN: Yes.

PROF SLOAN: So it makes it sort of complicated, from our analytical point of view, as to what happens. Can I just go back to this point, which is something else that was raised in a number of our visits, that you might expect an advantage of Part X to be that you can kind of do it all onshore, but in fact some of the big shippers and freight forwarders we've spoken to increasingly just deal overseas. They're talking to people in Hong Kong and Singapore, because the feeling is that the agents of the shipping lines in Australia are increasingly low level and to sort of negotiate anything of substance one has to actually basically deal overseas. Do you find that?

MR HEINZMANN: One of our concerns is that that is increasingly the case and, of course, if you contained a situation here even further with heavy legislation, then that's most likely the outcome, that all negotiations go overseas.

PROF SLOAN: I just think it's interesting to observe that. It seems to have happened anyway, that a lot of the big shippers are having to sort of ring through to Hong Kong and Singapore and the like anyway rather than deal locally.

MR HEINZMANN: And it most likely will continue. Of course, the base rate will be determined by the large vessels. The large vessels will not come to Australia.

PROF SLOAN: Have you got a view on confidential individual service contracting? Would that be a step forward?

MR HEINZMANN: That's what we do. That's what our company does.

PROF SLOAN: So that confidentiality is just maintained through a shake of the hand, is it, at the moment?

MR HEINZMANN: Yes.

MR POTTS: Do you have any concerns about the way in which it's observed by the carriers? Some feedback we've had is that there are individual contracts, if you like, which are protected by common law. But, of course, if the shipper feels that it's not being observed by the other party, they have to take the action themselves, which is time-consuming and costly. Do you feel that the confidentiality of it is fully observed on the other side of the ledger, if you like, so that one carrier won't talk to another about the price negotiated?

MR HEINZMANN: I don't think there can be total confidentiality. In essence, it's a question of how much force you have and how much of an agreement between a serious shipping line and a serious shipper; how much integrity is in that agreement. In our case, on practicality, in our organisation we have people who come from the shipping lines - from senior management in shipping lines or from our competitor - so over the years you know what is happening and what is going on. It's not that you have to rely on a one-to-one discussion with one shipping line to identify what is happening in the market.

PROF SLOAN: Is it a bit like getting to know a real estate market or something? If you're looking around all the time, you really get to know what's happening.

MR HEINZMANN: Precisely, yes.

PROF SLOAN: Have you thought - because you've been in this industry quite a long time - about, over a cycle, to what extent the shipping lines that service Australia make money out of doing so? I mean, one of our frustrations is that we really haven't got a good handle on the profitability of those routes.

MR HEINZMANN: That's a difficult question to answer, because I don't have the balance sheet - - -

PROF SLOAN: Yes, but we would like to know the answer.

MR HEINZMANN: Generally speaking, I think I can project from the freight forwarding business into the shipping line business. The freight forwarding business regards Australia as a profitable business, good business, providing you do the right thing. You run a good business, you have good business in a market like Australia. You can't compare it to Hong Kong or other centres in the world, where there is far more throughput, but Australia is always looked at as a good market. It's the same with the automotive industry. The European companies do likewise there. You know that BMW and Mercedes-Benz regard Australia as a small market but as a very lucrative and nice market.

PROF SLOAN: Because it is true that some shipping lines have come here and then withdrawn and that others have come. In net terms, it would appear that it remains an attractive destination.

MR HEINZMANN: That's right.

PROF SLOAN: Yes, and therefore it's reasonable to assume that over a cycle at least they make reasonable money in doing that.

MR HEINZMANN: That's right, and in manufactured goods imported there is a specific requirement by quite a number of the companies to have the direct sailing maintained. Not everything is transhipped, because with the transshipment comes the uncertainty. If you have direct sailing from the North Sea to Australia you know that the ship is, in essence, a moving warehouse and the goods are accessible at a specific time.

PROF SLOAN: But that's often, as far as we can see in our visits, determined by, say, a big shipper. For example, we went to talk to the car companies, and they are just entire manufacturers, as you would know, and they need direct services. What happens is that negotiations might actually take place initially in Detroit and then they cascade down.

MR HEINZMANN: That's right.

PROF SLOAN: But that service essentially becomes like a sort of anchor tenant in a shopping centre, and other people are able to basically hitch their wagon to that service. Is that a fair observation of what happens?

MR HEINZMANN: That's a fair observation, yes.

PROF SLOAN: Often it's essentially the big shippers that will kind of determine whether or not a service exists in the first place.

MR HEINZMANN: Yes.

MR POTTS: Some of the exporting groups have said some negative things about discussion agreements and whether they should continue to be allowed under Part X, if that remains in place. Do you have any perspectives on that that we should be aware of?

MR HEINZMANN: Discussion agreements of the type you have from North Asia?

PROF SLOAN: Yes.

MR HEINZMANN: I tend towards the European system. In Europe they don't like these discussion groups too much.

PROF SLOAN: We can tell that you are European.

MR HEINZMANN: That's pretty obvious.

PROF SLOAN: Yes, because the sky hasn't fallen down there, has it - in Europe - without the discussion agreements?

MR HEINZMANN: No, precisely, but there have to be discussions between the shipping lines in order to increase efficiency. They have to have their slot agreements and consortia. That's understood. Even as the larger vessels come in, it most likely is even more necessary. But discussions just for price-fixing fly in the face of what we want. We don't want to deal with a group of shipping lines.

PROF SLOAN: Even though the European regulations are under review, is there more coherence with that system, where they basically have quite tightly disciplined and controlled conferences, plus lower-level consortia and an illegality of discussion agreements? Is there more coherence to that form of regulation from your point of view? Because, of course, in Part X everything is allowed.

MR HEINZMANN: Precisely.

PROF SLOAN: Are there any other points you'd like to make?

MR HEINZMANN: No.

PROF SLOAN: It was very helpful. We're very interested in where the freight forwarders fit in. I think I'm seeing the world the way you do. I mean, you are essentially acting on behalf of smaller and medium-sized shippers, to aggregate and ensure volumes and negotiate with individual shipping lines, by and large.

MR HEINZMANN: We're in a position to consolidate the volume of the smaller shippers. The difficulty in Australia, and still remains in Australia, is that some of the shippers do not necessarily see the services of the forwarders as useful or whatever. They try to make their own arrangements but that, of course, is different in other parts of the world, so maybe there's a process - - -

PROF SLOAN: Just one final point that I might pick your brains on is this issue: would most freight forwarders only be servicing one port? Would they only deal

with cargo for, say, the Port of Melbourne or would they - - -

MR HEINZMANN: No.

PROF SLOAN: No? So the issue of multiple-port visits, is that an issue that would concern some freight forwarders? They would like to see the ships visit the different ports regularly too?

MR HEINZMANN: Most forwarders - - -

PROF SLOAN: Frank told me, just to interrupt you, that Adelaide shippers are just as well served transshipping their stuff over to Melbourne and using the Port of Melbourne.

MR HEINZMANN: I don't think long term you can continue to serve smaller ports. The worldwide development is larger vessels. Even with the main ports, you have a threat of them not being served by large vessels - - -

PROF SLOAN: That's a market development, isn't it?

MR HEINZMANN: That's right, it's a market development.

PROF SLOAN: It's a market and technology development with the bigger ships, yes.

MR HEINZMANN: Yes, providing you have a feeder away from the main port.

PROF SLOAN: Yes, you need to get the internodal transport going.

MR HEINZMANN: That's right.

PROF SLOAN: That may be something that happens irrespective of what happens to Part X - - -

MR HEINZMANN: Yes, that's happening - - -

PROF SLOAN: That's happening in England, as we understand it.

MR HEINZMANN: Yes, and it's happening here too.

PROF SLOAN: Yes, so increasingly things will be shipped out of a small number of ports.

MR HEINZMANN: Yes.

PROF SLOAN: All right. Thank you very much, Fritz. That's very helpful and an important perspective from our point of view.

MR HEINZMANN: Thank you.

MR POTTS: Thank you.

PROF SLOAN: Thank you very much.

PROF SLOAN: We've got David Greig and Richard Stevens. If you could state your name and organisation for the record, that would be a great help.

MR GREIG: Yes, thank you. I'm David Greig and I am from the economic consulting firm ACIL Tasman. I have been working with Richard.

MR STEVENS: Richard Stevens. I am the managing director of Thompson Clarke Shipping. We are small independent shipping and transportation consultants.

PROF SLOAN: I was talking to Llew Russell in Sydney. Is this work that you've undertaken for Shipping Australia?

MR GREIG: We were engaged by Shipping Australia but to produce a report that's ours, with our views. We've stated our position at the beginning of each of our submissions. We don't want to hide the fact that we were engaged by Shipping Australia.

PROF SLOAN: No. So they paid for your work?

MR GREIG: Yes.

PROF SLOAN: Is it one or two points of view?

MR GREIG: There will be several probably by the time we are finished, but this work is our view and Shipping Australia have done their own submission, which is their opinion.

PROF SLOAN: Yes.

MR GREIG: We see our work as being independent but, yes, we were paid by Shipping Australia.

PROF SLOAN: Okay, fine. I hope you might take some time to just give us a short presentation on your points of view, and both of you are very welcome to speak. I said this to Llew: there seems to be a bit of confusion about the onus of proof. I mean, it's an issue that concerns me. You will probably think it's not a big thing, but the point of this inquiry is that this is an inquiry undertaken under the national competition policy guidelines, which of course place the onus of proof on those who wish to retain anticompetitive arrangements.

The onus of proof is, in fact, not on us but is actually on the party seeking to retain anticompetitive arrangements, and they need to demonstrate that those arrangements produce public benefits and that there are no alternatives which would

generate a similar public benefit. I just wanted that point made for the record. I don't think it really affects your submission a great deal.

MR GREIG: It's not central to it. It is something we've thought about, and perhaps I will come to that later. I guess we don't fully agree, but we have a view - - -

PROF SLOAN: I'm not sure we have any alternative actually, because our inquiries are undertaken under those guidelines.

MR GREIG: Yes. Well, we will certainly come to that.

PROF SLOAN: Okay, so if you would be happy to - - -

MR GREIG: Yes. What we would like to do is each speak for a few minutes.

PROF SLOAN: That would be great.

MR GREIG: But the way we worked, we each concentrated on our areas of knowledge but reviewed each other's work as we went.

PROF SLOAN: Yes.

MR GREIG: That is as you would expect. If I could just start with some characteristics of this industry that seemed to us important to the conclusions you will be drawing, one is that it's a service industry and it has got several quality dimensions that seem to be important to its customers, especially frequency. Hidden behind that is reliability, safety and dependability. The arrangements that we've seen evolve over 100 years; initially conferences and now, in this part of the world, discussion agreements. There has been some arrangement of that general type over, I guess, 100 years and it doesn't seem to have gone away. Normally, you would expect, if there was a pure cartel-type arrangement, that it would have collapsed by now. By "cartel", I mean someone extracting long-term monopoly rents.

So one can surmise from that that these arrangements are essentially cost-driven rather than demand-driven and, as the commission said in its last report and others have said, there seems to be a basic need for cooperation amongst shipping lines to provide the sort of reliability and frequency that the customers want. The other warm-up comment I'd like to make is that this is an industry with easy entry, by any definition. Once you are in the shipping game, it's easy. It's not easy to set up a big shipping company, but once you're there you can come in and out of Australia relatively easily.

PROF SLOAN: By assigning ships to routes?

MR GREIG: Yes. You can get into the ports, you can get the ships in, you know.

PROF SLOAN: Not international aviation.

MR GREIG: We will come to aviation in a minute. That's even easier. From the NCP-type perspective you mentioned, this industry - I wouldn't quite say it's unique, but it's in a category of industries that I don't think fits that well with a straight national competition policy framework, which are international service industries. I'm thinking of shipping, aviation, international banking, telecoms and the like, where it's difficult to apply a regime for one country that doesn't have extra-territorial jurisdiction and where the owners, in this case entirely and other cases partly, are overseas. If I just come to aviation as an example, that's an industry where NCP, in our normal understanding of it, doesn't apply. This is international aviation.

Instead, it's still a committee and a minister making various decisions and allocating rights. It has liberalised quite a lot over the last couple of decades, but it's still there. You have ministers declaring that certain groups shall not have extra airlines just now, because of their view about the industry at the time. Entry to that industry is harder than for shipping, because of these bilateral agreements, which have no equivalent in shipping. Sometimes there is a landing slot problem and there are - most importantly, I think draconian ownership restrictions. That doesn't apply obviously in shipping, where they are all overseas owned. In passing, the ACCC has authorised price fixing by Qantas and British Airways, because there's enough other competition around.

PROF SLOAN: Under Part V11.

MR GREIG: Yes, but you could argue there's even more competition than with shipping. The next thing I would like to just mention for a minute or two is discussion agreements. What are they? Firstly, they have open entry into their industry and not everybody in the trades is a member so Richard has given some updated data on the degree of independent members who are not covered by them. They don't control capacity because they have no enforcement mechanism, if for no other reason.

PROF SLOAN: They discuss capacity.

MR GREIG: Yes, but they can't enforce it because they don't have any power over what they do. They do discuss supply and demand in the industry. I presume they discuss capacity. They also - and I should correct something or clarify something I wrote in the table - in the terms of the legislation, fix prices. They do sometimes have maximum prices they would like to aim for and they sometimes or often set

surcharges. So, in terms of the legislation, they do fix prices. What I was writing there on page 79 is really they don't fix prices in the layman's sense of a firm tariff which must be adhered to at all times, the way we would, for example, as a retail customer of an electricity company who faced their tariff limits and that's that.

PROF SLOAN: That's not really true of any Part X agreements.

MR GREIG: Sorry?

PROF SLOAN: That's not really true. I mean, gone are the days of the closed conferences, so there really aren't any fixed tariffs anywhere.

MR GREIG: No. I used the term ambiguously in the way I wrote it. So you have these prices which are in business plans which are given to shippers as a basis of negotiation with, you know, some advance notice and you have surcharges, but what you end up with at the end, the composite price will be heavily influenced by what's at the bottom, which is the base rate that's negotiated in private, and not usually known, so that's what I meant by not being fixed.

A couple of other points about these agreements. It seems from the outside that the market is working. The spike or the rapid rise in prices from North Asia southbound, after a lag of a year or so, led to a large increase in capacity, as you would expect a market to do. I guess the cartel has tried to stop that increase.

PROF SLOAN: It's hard to judge the counterfactual, though, isn't it?

MR GREIG: Yes.

PROF SLOAN: There were a lot of concerns that the delay in the increase of the capacity was not what the market would have thrown up.

MR GREIG: Richard, I guess, will come to this. There are some practical supply-type charter-type problems that I think can help explain that. The final point on this little bit is the public interest. What does that mean? It was raised, I think, in another hearing, and I've been thinking a bit about that. In this industry, there's not - or at least in our view - a monopoly issue, and there's also not really an external cost and benefits externalities-type issue, so the public benefit really boils down to the customers - initially the shippers and then their customers, so the wider community - a trade-off between price and quality of shipping services.

Looking just to the future, if there wasn't a Part X - or the same thing, I guess, discussion agreements not allowed, no Part X - things might stay as they are roughly or they might get worse. I guess it's speculation about how strong each of those

likelihoods is but, if the risk and uncertainty faced by shipping lines increases as a result of that, then they will tend to seek a higher return on capital. Then one can speculate how they might do that; tightening supply somehow by having a finer balance between load and capacity or by individual lines deciding to cut certain ports, for example.

So it seems to be quite a major decision that Australia is heading to here. There is a risk. I don't suppose anyone in this room knows exactly what percentage likelihood there is of these negative things happening, but there is a risk and it's a fairly radical thing, given the history and given what other countries are doing.

PROF SLOAN: There's a risk in changing up.

MR GREIG: Finally, there is the onus of proof issue that you raised. I'm no constitutional lawyer, but it seems to us that Part X is not really a piece of legislation that enshrines a monopoly. It's much less direct than that, and it's not clear to me that it therefore does fit in that standard NCP framework. One could equally argue the onus of proof should be the other way round, because a consequence of not having Part X would be that the only instrument available, other than people doing nothing, is Part VII, which is regulation under the ACCC with the procedures, and usually we say in this country that regulation shouldn't be applied unless one is confident that that is better than the alternative, with the onus of proof on those proposing regulation. So that's our view on that. That's me.

MR STEVENS: Thank you.

PROF SLOAN: Can I just make a point that, of course, NCP reviews have been in no sense confined to the issue of monopolies. It's all pieces of legislation which have potentially anticompetitive effects, so it's not synonymous with the issue of monopoly at all.

MR STEVENS: I would like to make one or two comments about the industry specifically rather than the regulatory situation.

PROF SLOAN: Yes.

MR STEVENS: First of all, the market. Australia, looked at in the way we normally look at it, is something less than 2 per cent of the world market in terms of containers. You're talking about 4 million TEU roughly. On a total global market today, Drewry Ocean Shipping Consultants based in London normally define something in excess of 300 million. It's a difficult market. It's a long way away. We've heard a lot about long thin routes from major trading areas. It's geographically a very big market, with dispersed ports and pretty inefficient and

pretty expensive land transport infrastructure linking those ports. The third, I think, most important point is two-thirds of our trade today is with Asia, and that is the rapidly growing segment. The long thin routes to Europe and to the United States are much lower growth and now account for less than 20 per cent of Australia's foreign trade.

If we look at what has happened since the last Productivity Commission review - again, concentrating on the industry - the competition within that industry, I would argue, has remained very high. You have, over the five major trading areas - North-East Asia, South-East Asia, Europe, the Tasman, and North America - 39 different consortia in operation. You have 34 transshipment carriers. All that adds up, on those five routes, to 164 individual company route service offerings. That doesn't smack to us as being either a controlled or cartel type or very regulated market. There is tremendous choice for shippers and importers. That has been pretty consistent. It has changed a little bit in the last five years, but not dramatically. Part X hasn't inhibited any of that. It would be arguable that it has actually encouraged quite a lot of that.

Secondly - and David already made the reference - there has since 99 been a cycle. There was a significant downturn in the industry in the year 2000-2001, when volume growth became difficult, when there was over capacity. There was a significant drop in rates, and Fritz Heinzmann referred to this. Since 2003, and largely due to what is going on in China - and it affects not just Australian trade routes; you can see it on the trans-Pacific; you can see it on the European routes - there has been a very strong surge in volumes. The carriers and the industry are responding to that with a major building program and a major introduction of new tonnage, and one has seen that already in terms of additional tonnage, particularly on the North-Asian route, which is the main one since the beginning of this year, basically in the last 12 months.

The third aspect is the number of independent operators. If you look at it in terms of numbers of operators - again, over the five major routes, which account for 90 per cent of Australia's containerised foreign trade - about 50 per cent of the individual services are offered by independents, and I'm including in that the transshipment operators, who may not carry as large a share of the traffic as the direct carriers but they undoubtedly have a major influence in that they provide extra capacity. They act as a safety valve, on top of which they act as a restraint on price, because - again, as Fritz Heinzmann mentioned - transshipment services are generally seen as inferior to direct services and, if they're seen as inferior, you don't get the cargo unless the rates reflect that inferiority.

The fourth point I would like to make in respect of the industry is that, looking through the responses that have been to your inquiry, 18 out of the 24 have supported

Part X, four have been fairly clearly anti and three of those have come from chambers of commerce. Without putting too fine a point on it, I would argue frankly that the chambers of commerce are not really in touch with what's going on in this industry. The shippers, the industry associations, the forwarders and the carriers are. It's their livelihood. They have to make money out of this. They have to provide a service that is efficient. The chambers of commerce are not party to any of that, frankly, on a direct basis.

PROF SLOAN: I don't think it's a good idea to slag off at participants, actually, Richard.

MR STEVENS: I'm not slagging off. I'm just pointing - - -

PROF SLOAN: Let me point out also that, of course, it's never a numbers exercise for us. It's about the strength of the arguments.

MR STEVENS: Yes, of course.

PROF SLOAN: And, of course, we've spoken to a very large number of people who won't be making submissions, who also made their points of view clear.

MR STEVENS: So are you suggesting this is the tyranny of the minority?

PROF SLOAN: No. I'm just saying that it's always the strength of the arguments. So some of those groups who argued in favour of retention of Part X are also representative groups.

MR STEVENS: Yes, but I think it's indicative that, of the major players within the industry, none of them really have said, "Get rid of Part X." A number have said, "Let's modify it," and we would agree. There are modifications that would be desirable and can prove it.

PROF SLOAN: Of course, if you look at the history of reform of regulated industries, that is always the way, because people don't understand the costs of regulation. So when you go to review these things, very often, in fact, the users of services of regulated industries don't actually understand the costs, so that's why the strength of the arguments is the key.

MR STEVENS: Yes, I understand that. The last point I would like to make is if Part X is got rid of, there are a number - and I would be happy to talk about them - potential risks which will adversely affect Australian exporters, who are not having the easiest time at the moment with the strength of the Australian dollar. I frankly find it very hard to find any tangible benefits that one can reasonably expect from its

disposal.

PROF SLOAN: All right. Do you want to kick off, Gary?

MR POTTS: Sure. Just picking up one of your points, Richard, that you think this is a very competitive industry - and I think we would agree - if you look at the routes that are serviced, some of those routes do appear to be fairly competitive. Equally, I think, if you look at some other routes, they seem to be characterised by a relatively small number of shipping lines and some fairly market-embracing consultative arrangements authorised under Part X.

I guess where we would probably have a different point of view from the one that you've put forward is the notion that, by definition, all arrangements that are set up under Part X can be taken to be competitive and pro-competitive and that we're better served by such an arrangement than one where there would be a fairly objective evaluation, undertaken by an independent body, as to whether or not those arrangements, in effect, are pro-competitive or at least not anticompetitive. Would you make any observations on that? Is your view that all the routes at the moment, and all the agreements that relate to those routes, are pro-competitive and not anticompetitive?

MR STEVENS: The major ones?

MR POTTS: The major ones.

MR STEVENS: The major ones? I'd argue that. The five I mentioned earlier on; just north Asia, South-East Asia, North America, Europe and the Tasman. On none of those routes are there less than 27 individual company service offerings. That spells to me competition. Having worked in the industry as an operator, when you have that number of competitors, there is inevitably fierce competition to get business from both shippers and exporters, from forwarders and negotiation with industry associations. On top of that, if you talk about Europe and to a lesser extent North America, you have very major transshipment activity over Asian ports. As we say in the industry, you only need one rogue elephant in the patch and it lowers the price level for everybody, because you have to respond; you can't ignore it.

MR GREIG: The other thing I'd add, more from outside, is the easy entry into it. The threat of contestability, the threat of entry, is there on top of the existing players.

MR STEVENS: We've seen that in the last 12 months in North Asia.

PROF SLOAN: Yes. Like a very benign arrangement, these agreements would absolutely fly through Part VII because, after all, you are painting a picture where

this is a very competitive industry, which is precisely the point made in terms of the BA-Qantas arrangement. That is given a tick because of the competition on that route. Is that not a conclusion we can draw?

MR GREIG: I wonder whether Part VII would be used if there were no Part X. Bearing in mind all of these are foreign owned, you have a process which would be at least six months, and maybe appeals. I came originally from outside of this country. The Australian processes for these hearings are somewhat unique and they take some getting used to. You have to hire professional help for it.

PROF SLOAN: Hang on, that's a slightly different issue. What I'm saying is that that's a sort of issue of practicality.

MR GREIG: Yes.

PROF SLOAN: By painting such a benign outcome, it seems to me that you would contest that these agreements have no anticompetitive detriment and therefore they would get the tick off. I don't think anyone is arguing about what is hopefully the key driver in this, and that is the requirement for shippers to have regular scheduled services. That is the key. That's the absolute key.

MR GREIG: And that is one of the real risks if you - - -

PROF SLOAN: The commission concedes that there will need to be coordination between the shipping lines, because that service cannot be provided by individual shipping. We're all agreed on that. Going back to Gary's point, which is that there seem to be an awful lot of different types of agreements that get registered under Part X and it's hard for us to believe that they are all equally benign - - -

MR GREIG: Yes. If you have a whole lot of trades, each having to go to Part VII, each for six months, not knowing what the outcome would be - you've said they'd probably get through because the shipping lines wouldn't know - and then possibly appeals, it's enough to add to some uncertainty, I think.

PROF SLOAN: It's a big call, in a sense, because these are arrangements which every industry would kill for. As an economist, is it not fair that that net benefit needs to be demonstrated?

MR GREIG: I guess it goes back to our earlier exchange about the nature of the competitive framework for this international service industry; onus of proof and so on.

PROF SLOAN: I mentioned - and I don't think you were here at the time - that

there are a few empirical conundrums that have arisen. Might I say there seem to be some issues that you've raised with some of our tables and empirical issues which I think by and large are best conducted on a staff-to-staff basis. I don't think we need debate all of those points, although I might come back to a few of them and you might want to too.

MR GREIG: I'm happy for that, and there has been some considerable amount already.

PROF SLOAN: Actually, that issue of the 2 per cent you raised; that's not actually the number that seems to be accepted of what percentage the Australian container trade is of world trade.

MR STEVENS: I would challenge that.

PROF SLOAN: Exactly. I don't think we can get to the bottom of it just at this point.

MR STEVENS: No. I agree.

PROF SLOAN: There are two issues I'm interested in. First of all, to the extent that the trade routes are long and thin to and from Australia, there are clearly some routes that are longer and thinner than others. It seems that it's the longest and thinnest that are essentially serviced by independents, whereas they are all Part X agreements that are on the less long and thin. That seems to us counter-intuitive.

MR STEVENS: It depends on what you classify as the independents. The long and thin routes are basically Europe and North America. Traditionally, they may have been the ones which were most subject to conference control, or whatever you want to call it, but that really isn't the case today. The short fat ones, if we can talk about it, are basically North Asia and South-East Asia. In South-East Asia you have over 30 individual company service offerings and a similar figure in North Asia, and both are capable of being served by transshipment carriers. In North Asia alone, you have nine different consortia or service packages.

Most of them belong to a discussion agreement, but commercially and operationally they work very independently and very competitively one against the other. You've seen what has happened in the North Asian trade just in the last 12 months, with the entry of new tonnage. If there was a concern about them being in any way constrained, it's very hard to see how that sudden increase in capacity has come about.

PROF SLOAN: With some delay, though.

MR STEVENS: Yes, but this is not the bulk market, as you yourself have - - -

PROF SLOAN: No.

MR STEVENS: It takes time to find the tonnage, particularly in current circumstances. There is a real difficulty in finding suitable ships. This particular trading addition has a very strong reefer base. There is no point in putting a ship onto the route to serve Australia if it doesn't have the reefer capacity, because it is fundamentally the reefer cargo that makes the service viable.

PROF SLOAN: Yes.

MR STEVENS: Without the reefer cargo, in many cases there would not be a service because the lines just couldn't make it pay. So you have a real problem about finding dimension.

PROF SLOAN: I still remain a bit unconvinced about all this, because it seems to me that if all the Part X agreements are in the thicker fatter routes it leaves me with the sneaking suspicion that there is some sort of regulatory commercial advantage to that, which is not just about a purely competitive arrangement. Maybe we can do some of that debate off-line.

The other issue is the role of independents. When we looked at this five years ago, we did place a lot of store by the role of independents essentially keeping the market honest. From our analysis, it seems - and I think this contradicts some of what you're telling me - that the role of independents seems to us to be less important now. There seem to be fewer true independent services now, because they might be independent on one route but they're involved in consortia Part X agreements elsewhere. I'm sure if that was being observed by the ACCC they'd take a rather serious look at that.

MR STEVENS: In some cases, you are correct and the ACCC might take that view. Frankly, the ACCC doesn't have an industry like this to deal with. One of the problems, particularly when you start talking about transshipment traffic, is that the capacity that is on offer - the space that is actually at any one time available for shippers and importers to take up and the price of it on offer - is driven by a whole series of factors completely outside of Australia's control. I'm not saying it's because it's Australia. It's outside of any one country's control because you are talking about a matrix in the network.

More and more with the shipping lines, like the airlines now, the better ones are very heavily involved in yield management, because they've found that if they

don't get involved in yield management ultimately they crucify themselves. That makes the whole question of independents and inter-dependents a very complex issue.

PROF SLOAN: In terms of the role of independents servicing the Australian routes, what have you seen as being the trends in the last five years?

MR STEVENS: On the figure we've got - and I was going to show you that later on - if you take again the five routes we were talking about - I'm sorry, I've included the Middle East as well - you are talking about, five years ago, 46 per cent of the individual carriers actually operating as independents. Today it's 52 per cent, so it really hasn't changed. That's numbers of carrier services. It's not necessarily the amount of capacity. It's about 33 per cent, if you look at capacity. It's still very substantial. It hasn't really deteriorated. If anything, it has gone the other way.

PROF SLOAN: We'll have to get to the bottom of some of those disputes, I think, and this issue that we don't seem now to have what you'd regard as truly independent carriers because they might act as independents on one route but be involved in consortia on another and the like.

MR STEVENS: This comes back to my point about the interrelations that are so very complex.

PROF SLOAN: Yes. I understand that.

MR STEVENS: What is genuinely independent? A single stand-alone carrier is the only genuinely totally independent and there are virtually none of those left anywhere in the world any more, particularly on a difficult route like the Australian route.

PROF SLOAN: Did you want to make a point on that?

MR POTTS: No, just on return of capital, but you are probably coming to that, I suspect.

PROF SLOAN: I will come to that. It is important for us to think about what has changed in the last five years, because I think quite a lot has changed, including the regulatory environment overseas, the technology, the transshipment trend, the bigger shippers, the ships coming on.

One thing that seems to have occupied a lot of the attention of the shippers that we've spoken to is the rise of the discussion agreements. It would be fair to say that there is quite a lot of hostility towards the discussion agreements. Again, there

seems to be some dispute as to your figures about what market share the discussion agreements hold on certain routes. Certainly, from the point of view of the shippers, they regard the discussion agreements on some of those Asian routes as being very high, and there's a lot of frustration out there. Did you want to talk about that specific issue? One of the issues on the table for us is that they should be made illegal, in keeping with European regulations.

MR STEVENS: European legislation is in a state of some turmoil right at the moment.

PROF SLOAN: It is, but I'm sure the discussion agreements aren't going to be made legal as part of the change.

MR STEVENS: Specifically looking at the Australian situation, again the number of discussions agreements hasn't dramatically changed in the last five years.

PROF SLOAN: But would the sky fall in if they were made illegal?

MR STEVENS: I don't think the sky would fall in. Life goes on. People have a great ability, one way or another, to make things work. I think it would make life considerably more difficult. You go back to, "What does the discussion agreement do?" They referred to it earlier on. Basically, they review supply and demand. One of the difficulties, in common with aviation, in this business is that the service offering capacity is a perishable product. Use it or lose it. It's not here tomorrow.

PROF SLOAN: That's true of all service industries.

MR STEVENS: Not in all cases. Bulk shipping is not like that. You position your ship when you know the demand is there. If the demand isn't there, you put your ship somewhere else. The liner shipping company doesn't have that option, not in the short run. The longer run has, as you heard the other day. Secondly, the carriers in the business are having to cope with the market and regulatory demand at two ends of the line and each side of that market is critical to him because, as in all transport economics, if he doesn't get a remunerative two-way flow it's very very hard for him to make a living.

MR GREIG: With the sky falling in thing, no-one would suggest, I think, it would entirely fall in the sense of shipping services to Australia being stopped.

PROF SLOAN: Because they don't apply on the European routes at the moment.

MR GREIG: Sorry, what?

PROF SLOAN: The discussion agreements.

MR GREIG: Yes, but they have conferences.

PROF SLOAN: Yes.

MR GREIG: I'm not sure anyone is talking about having conferences here, and you could almost argue that conferences are - if one thing is not allowed and one is, then it makes the other one more attractive. The Europeans proposed a policy which now it's hard to see what is going to happen with it. It's a draft and there's a process going on, and I'm not sure what is complete. Either things will stay much as they are, as you've argued in the draft report, or they could get worse; not dramatically worse in the sense of no more ships to Australia but a more cautious industry seeing greater uncertainty than it did before and responding somehow.

Then one has to speculate what they would do, and it's individual lines. I guess the most marginal line would take a slightly more cautious view and at some point either not serve, so the frequency goes down, or cut out ports or whatever. It will go a bit lower, but none of us, I think, know how far.

PROF SLOAN: I guess this is a more specific point, because you're telling us there aren't any externalities to take into account. The shippers are telling us they don't like discussion agreements. They don't like discussion agreements because, from their point of view, they often occupy high-market share. It's like trying to negotiate with a piranha and they will never give you any binding outcomes, and they don't see benefits from it. You're telling us to take account of what the shippers say in one breath but not in another.

MR GREIG: We're at maybe a disadvantage here if shippers are saying things that they haven't written, because we collectively have read the submissions - - -

PROF SLOAN: APSA are not keen on discussion agreements.

MR GREIG: If there are other things that are being said privately - and we don't know what they are and we don't know whether it's assertion or evidence - it's hard for us to comment. But we read that most of them either support Part X or a variation of it and the graph, as Richard said before, clearly again starts in between. There are some suggestions for improving Part X. The one that I think is a clear improvement would be to have US-style protection of the confidentiality of individual deals. I don't think anyone would oppose that.

MR POTTS: We had one witness this morning talking about arrangements with Tasmania, and that's a consortium where there's no price fixing or price discussion. I

think he was emphasising to us that the arrangement works very well from their point of view.

MR STEVENS: But that consortium is a member of a discussion group, or its carriers are.

MR POTTS: But covering that particular route?

MR STEVENS: Covering South-East Asia. But I think the point you make is right. That consortia provides service to Tasmania, which is important because the alternative in terms of positioning freight into Melbourne on the Bass Strait ferry services would be a lot more expensive and less efficient.

PROF SLOAN: Not according to their men. It's actually very competitive, which is the joy of competition for them at the moment. They've got three service routes to the mainland.

MR STEVENS: It's very competitive because of the Tasmanian Freight Equalisation Scheme - - -

PROF SLOAN: Probably.

MR STEVENS: - - - which is a main intervention in the market. It doesn't occur in most places.

PROF SLOAN: That's probably right. No, that's absolutely untrue. Every country which has a big island has a freight equalisation scheme.

MR STEVENS: The Brisbane shippers would love to have something like that.

PROF SLOAN: Yes, of course; maybe the Adelaide one too.

MR STEVENS: Sorry, commissioner, can I just reply to Commissioner Potts' point?

PROF SLOAN: To be clear, that consortium is part of the discussion group, or whatever it's called, but they have made within that framework a decision to serve Tasmania, because they see there's a commercial opportunity and they're not inhibited in doing that. They are operating within parameters on pricing which have arisen - - -

MR POTTS: So the discussion agreement that they're a member of covers Tasmania as well, you're saying?

MR STEVENS: Yes. It's pan-Australian. It's not Australia, it's South-East Asia.

PROF SLOAN: With regard to this issue of the rate of return, it seems to me that you're talking about, as I said, a very benign competitive arrangement, with all these shipping lines wanting to come to Australia. They're not doing that out of the goodness of their heart, which presumably leads me to the point of view that they're earning, certainly, adequate rates of return on their capital.

MR STEVENS: No.

PROF SLOAN: So they're run by idiots, are they?

MR STEVENS: No, they're not run by idiots. They are now at the current point in time - - -

PROF SLOAN: Okay. Let's qualify it, over the cycle.

MR STEVENS: In the long run, you've seen in your own reports you had the return on equity figures, and I haven't individually checked them, but I've no reason to doubt them. They seem to me to be pretty representative. The AP Moller figure was the exception, but that was because the oil and gas figures are in there. If you look at their shipping returns, it's much lower and much more in line with all the rest. Australia is attractive, in the sense that more and more the big international carriers are interested in the global contracts of companies like Hewlett Packard, Sony, Toys "R" Us. Some of those global contracts - which, as you heard earlier, are largely negotiated in New Jersey or Tokyo or Frankfurt, wherever it happens to be; virtually never here in Australia - require a global service capability. It is possible to provide that capability of Australia through a subcontract arrangement, depending on how demanding the shipper is, but generally speaking subcontractor arrangements are less reliable than provision in-house.

That's one of the basic reasons. The other is to do with moving equipment and utilising ships as efficiently as possible. I think there are some interesting examples. If you take the European trade which was offered by AELA till three or four years ago and the US east coast trade where the carriers in that trade were running, frankly, clapped-out ships which had reached the end of their lives - were at their use by date, if not beyond - the major issue there was how to finance replacement tonnage, and the only way they managed to find a justification that their boards and shareholders would accept was to combine the trades and build ships which were effectively dedicated for those trades.

These are the so-called albatross class 4100 TU ships which are now going

around the world Eastabout. They're the largest reefer container ships in the world; very difficult to redeploy elsewhere; relatively small changes in the rates that they can generate for those vessels; destroy the economic fundamentals on which the investment was made. So I think one has to be careful about saying they must be making very good returns.

PROF SLOAN: I didn't say that.

MR STEVENS: Sorry, I must have misheard you.

PROF SLOAN: I said they are making adequate returns on their capital, including to service the Australian market. As you say, there are even more ships coming in.

MR STEVENS: That's being driven by the Asian - - -

MR POTTS: They're either doing that or the rate of return is - as you say, it's only 3 to 5 per cent, which suggests that the market is oversupplied in the long run, which would mean, I would think, that if the arrangements were changed in Australia it's unlikely that supply would be withdrawn.

MR GREIG: We didn't in our work - my company - go around interviewing shipping companies about why they bother to come here with the low returns. We can infer over the cycle that they are making low returns but ones they judge to be adequate. From that, I would infer they see this is as a stable country to do business in - the economy has been growing for 13 years or whatever - and a benign operating environment. So what I've been worried about is, if that environment became less benign, would they seek a higher return. I think one can see from their behaviour they're not idiots. They are making a sort of commodity-type return; pretty low but one which fits when you've got a low-risk business.

MR STEVENS: A couple of examples: coming down to the east coast - round the world Eastabout trade we talked about just now with the large ships - having launched that service, they found that it wasn't possible to operate to the original schedule and, you know, demurrage on a ship is \$20,000 a day, \$30,000 a day just on charter rates in current market terms. So two or three days difference does fantastic things to your bottom line over 12 months. What do they do? They cut out Fremantle and New York as ports. Adelaide was mentioned earlier on. The US west coast service originally had 15 ships on two strings. They cut out two because the charter rates have effectively in the last 12 months trebled and they simply couldn't afford to maintain 15 ships in that trade. Adelaide was one of the casualties and it wasn't the only casualty.

There are two illustrations there of what carriers and consortia - not discussion

agreements, carriers and consortia - will do when the going gets tough, because they have to. If they don't, they don't stay in business or the next time they have to replace ships they say, "No, we're not providing the money because we can't get a decent return." I think that is our concern.

PROF SLOAN: The reason I brought up the Adelaide case, apart from having had an involvement with the Port of Adelaide, was that this is all about the market. I mean, the regulations hadn't changed. The market trend for the carriers to call at a smaller number of ports and to then try and improve the sort of tranship tasks on land is a worldwide phenomenon. So whatever is done with Part X probably won't make any difference. Being an economist, which I guess you are too, you need to feel a bit sceptical about attributing some of the things you said in your second submission to regulatory change.

Some of these things are going to happen whatever happens. They're overwhelming, and if you haven't got the volume the ships are not going to come, either in a tramp sense or in a schedule sense, particularly in a schedule sense.

MR GREIG: Yes. Where you have the two happening at once there will be underlying factors, as you've mentioned. If the rate of return that shipping lines seek, that they expected goes up because they feel the atmosphere has become less benign, then there will be decisions made in the margin, whether the margin is a port being skipped or capacity not being added as the volume goes up and the high-load factor occasionally turning down freight to the next ship. That's what one can speculate. So you could have both things happening at once in Adelaide or in any such place.

PROF SLOAN: But is this just not a guess of yours? I mean, I sit on company boards and bad things happen all the time. You know, regulatory adversities happen all the time. We don't all of a sudden say, "Well, we're going to pick up our boat and paddle and walk off into the - - -"

MR STEVENS: I'm sorry, it's not a guess. I quoted two examples just now where it has happened in the last 12 months due to pressure in terms of their cost structure.

PROF SLOAN: Yes. No, I'm not saying because of that, but I'm saying if we were forever reacting to regulatory changes - and, believe me, they're happening all the time - I mean, we act in our commercial interests and I guess you agree with me.

MR STEVENS: I agree with you.

PROF SLOAN: And the regulatory environment, I guess, is one of many factors that affect those commercial decisions.

MR STEVENS: And this particular regulatory environment as in force today is generally more helpful than it is unhelpful. If it is removed, I would have some real worries about seeing more of what we were talking about in terms of the round the world east coast trade and the VSA service to the States. I mean, a carrier faced with a more difficult operating environment, whether it's due to market forces or regulatory constraint, can't make the kind of return that he needs to, is going to reduce capacity or reduce frequency or reduce range of ports.

PROF SLOAN: Therefore, by saying that, aren't you actually talking against your book? You've told us it's benign and competitive, so what would change? You're telling me that effectively their return has improved by Part X regulation. I don't know whether you can have it both ways.

MR GREIG: If the environment in which they work becomes less benign than now, then they will make decisions out of the margin. As you were saying, in their boardrooms they will decide what to do and what not to do, and there will be other factors, as you said, and there will be the regulatory environment - - -

PROF SLOAN: I don't think you're addressing my point. You're telling me it's a highly competitive industry, they're only just earning an adequate return on equity to come to the market, there are no cartels, there is no real price fixing going on because it's so competitive, so I'm not quite sure what the removal of Part X is going to do to that economic equation.

MR GREIG: The low returns one observes would be consistent with a view by the investors behind these things that the operating environment is - - -

PROF SLOAN: Yes, but they're not going to jump at shadows, they're going to actually be looking at the figures.

MR GREIG: Yes, so they will make a judgment about the next regime, if there's a different one, and the uncertainties their firms face under that.

PROF SLOAN: Okay, we'll go back to the point. No-one is denying the need for regular scheduled services, and to achieve that there needs to be a degree of coordination and cooperation between the shipping lines. It's just whether that coordination and cooperation extends to discussion about prices and - the kind of thing that all other industries would kill for but would be regarded as profoundly anticompetitive - price fixing and the like.

MR STEVENS: All other international or all other domestic industries? I mean, I think one has to draw a distinction.

PROF SLOAN: I don't think there is, because so many domestic industries are involved in the international market one way or another.

MR STEVENS: But they're not industries that have assets which are mobile on a global basis, are subject to a whole series of regulatory regimes and a whole series of economic cycles in different countries. When you ask what would happen, it depends to some extent on what replaces Part X.

PROF SLOAN: Yes.

MR STEVENS: You've got two scenarios presumably basically, ie, free market - - -

PROF SLOAN: Yes. We're not actually arguing with that, because we see the need for discussions - maybe that's a poor word for me to use - between the shipping lines in order to coordinate their services, in order to provide regular scheduled services. We accept that. I mean, it may not in fact always require Part VII approval, because it would be saying - - -

MR GREIG: Yes. It's an interesting thing for thinking about, if you go to the next step, how one could make the regime you've just outlined, which is one of discussion and coordination, work legally. It strikes me that Part VII would be a very clunky way of doing that, because you'd have to do each trade. I don't know how often that part would have to be renewed, but every now and then it would have to be redone, each for six months, possibly an appeal, and in the meantime not sure.

PROF SLOAN: But, you see, that's a secondary issue to me. That's the practical issue. I want to get the theory right before I worry about the practical issue. Of course, Qantas and BA live with that. They've now got, I think, a five-year agreement. They clearly think it's worth going through the hurdle to achieve that.

MR GREIG: A lot is at stake in terms of dollars. Sure, it's a great - - -

PROF SLOAN: Yes. I'm sure there would be a lot at stake for shipping lines too, because they're expensive assets, as you've told me.

MR GREIG: Yes. It's a serious threat. When you solve that, you have to work back - - -

PROF SLOAN: Yes. I don't know how we're going for time. We probably need to move on. Let me thank you particularly. I do think you've actually set us a lot of homework.

MR STEVENS: We've set ourselves some too. They made us sweat on this side too.

PROF SLOAN: Yes, and I think there are some serious issues, particularly with the reworking of the tables. My staff tell me that there are some issues about the interpretation of transshipment, in particular; that you seem to interpret something that's transhipped after that point as being done by an independent, and that - as far as my staff tell me - may be affecting the figures in a way that we're not absolutely sure is right. Some of the reweighting of the tables look a bit arbitrary too, I might point out.

MR STEVENS: It's best judgment. Just on the transshipment, if I can clarify very clearly, you have two legs and one leg only involves the carrier between Australian and an intermediate point. There's the leg beyond, and that's the critical point. The making available of capacity and the rate at which that capacity is made available is something that is determined by that carrier individually and independently. It's not affected by whatever may be in a discussion agreement between Australia and the intermediate point. That's as far as saying it's basically independent. The constituent costs and availability of space between the intermediate point and the final destination, or reverse if it's an import, is a major driver in whether the service is made available and at what price it's made available. So it's independent, even though that carrier may have a direct - - -

PROF SLOAN: Yes. As I said, I think we might have to hold that discussion online because I think my staff are a little uneasy about that.

MR STEVENS: Yes.

PROF SLOAN: It is an interesting issue, though, from an economist's point of view, David - and I know the Department of Transport don't like me saying this, but I will - that it's very difficult to get to the bottom of the empirical story on these Part X agreements and how they're really operating, because the data are not very amenable to analysis and we have essentially had someone beavering away for months and months trying to get to the bottom of what the real market story is of these Part X agreements. I think, at an absolute minimum, you would expect that one of the by-products of regulation are good databases, so the costs and the effects of regulation are made very apparent. I think you've also had some trouble grappling with some of the empirical issues because - - -

MR STEVENS: That's absolutely right.

PROF SLOAN: - - - the data are not particularly amenable.

MR STEVENS: So is it one large conspiracy or is it a rather fragmented and disorganised industry?

PROF SLOAN: Well, yes. There seem to be some registered agreements that are even non-operational and the like, so it makes life very complicated for us. Are there any final points you'd like to make?

MR STEVENS: Could I just raise one thing, and it's back to if Part X disappears what is it replaced with. I have to repeat, or at least state, what I said earlier. I find it hard to see what real benefits are going to come against that backdrop to the Australian exporter and I would have thought, as an Australian citizen within this economy, that the wealth and the wellbeing of Australian exporters at the moment is as important an issue as anything. I can see a lot of downsides potentially. If can't see and identify the upsides, one can see some potential downsides, and that counts heavily with me.

PROF SLOAN: All right.

MR GREIG: In my own case, I started off this exercise agnostic before getting engaged and then I've ended up now personally rather worried what would actually happen, but I've talked about that before.

PROF SLOAN: All right. Thank you very much. Let me thank you for your broader contribution, which is very thorough, thoughtful and detailed too.

MR GREIG: Thank you.

PROF SLOAN: If you could state your names and your organisation for the purposes of the record, that would be a great help.

MR HUNT-SHARMAN: David Hunt-Sharman, the Australian Horticultural Exporters Association. I'm a director of the board and also the chair of the freight negotiation committee.

MR SUMMERS: Maxwell Summers, chief executive officer of the Australian Horticultural Exporters Association.

MR HOLMAN: David Holman from John Holman and Co. I'm a member of the Australian Horticultural Exporters Association.

PROF SLOAN: Thanks very much. You're a designated secondary shipper?

MR HOLMAN: Yes, we are.

PROF SLOAN: Did you want to start off by making an opening statement?

MR HUNT-SHARMAN: Over to me, I think. Just to summarise our submission and also our comments to the initial draft report, the AHEA does not support the repeal of Part X, which would subject lines and shippers to the general provisions of the Trade Practices Act Part VII. The AHEA, however, does support modifications of the use of Part X, and that includes deregistration of discussion groups, strengthening of clauses of enforcement to ensure proper negotiations take place, provision of all-in rates and not surcharges and all offers quoted for freight rates to be fixed Australian dollar rates, not US dollar rates.

For horticultural exports, the use of Part X of the Trade Practices Act is much about guaranteed regular scheduled liner service, with adequate equipment and support staff service levels, but it's also about setting maximum shipping rates for the small to average shipper-exporter to ensure that they are trade competitive and they have the opportunity to grow their business. That's our position initially, and we can qualify any of those comments.

PROF SLOAN: Thank you very much. Could you step back a bit for us too and perhaps describe the trade, so to speak. For example, where is it coming from, does it by and large use reefer containers, where is it going, other special features of your requirements?

MR HUNT-SHARMAN: Registered horticultural exports covers fresh fruit, vegetables and nuts. It includes cut flowers but, obviously, cut flowers go by airfreight not by seafreight, so the predominance of the freight negotiation is for

seafreight consignments. We're talking perishable items, fresh fruit and vegetables. 32 horticultural levy-paying industries, plus other industries that are not part of the levy group, are represented through the AHUA as the exporters that do the business. The actual sales, the order-taking, the shipping and the financial risk is in the hands of exporters once they take delivery of the fruit and product from the growers' shed door, farm gate or free on wharf. They're the ones taking the commercial risk, and it is their role to ensure that the landed price is competitive in our overseas markets.

The background to it is that exports for fruit and vegetables have been slowly but steadily evolving. They used to be treated as commodity. Australia has woken up to the fact that we are potentially the food basket for Asia, a third of the world's population, and it's our reputation for clean and green safe fruit, representing value for money, that enables us to have quite a good opportunity for exporting product from this region so close to the Asian market.

The problem is that with the globalisation of shipping trades the trade is now going east-west globally and Australia and New Zealand are at the end of the sighting. We're now feeding into central ports such as Hong Kong or Singapore for trade shipment to Europe and other further destinations. The Asian market is particularly of great importance but also the service level, availability of reefer equipment, having the equipment here on time when the season starts, not trying to play catch-up because we're not getting southbound equipment coming down.

PROF SLOAN: Does it more or less all go out in reefers?

MR HUNT-SHARMAN: Most of the trade. We can and do charter vessels. However, when you consider that most horticultural products out of Australia represent less than 2 per cent of world production - I think with the exception maybe of macadamia nuts - we really, from behind the eight-ball, have got to niche market because we don't have a critical mass of product. That also impacts on our ability to negotiate on trade rates, et cetera, because we are a minimal player compared to the rest of the global scene, so we are trying to niche market premium product, very expensive product compared to some of our southern hemisphere competitors. Our cost of labour, our cost of transport long distances and also our shipping costs are all factors which either make or break our competitive position. Traditionally there is now a - - -

PROF SLOAN: So quality is a concern?

MR HUNT-SHARMAN: We do it very well, qualitywise. I think the attitude in the past was export is what you do when you have something left over and the domestic market comes first. It still plays a part unfortunately, but I think there's been a steady evolution that there is an export market out there, we do have

high-priced products, we can attract premiums going into the top-end of those markets, but we must ensure that the product we receive in pristine condition at this end hopefully is presented in the same condition at the destination. That comes back to good equipment, being able to monitor in transit, which is a new feature of recent time - that we have real-time reporting out of container technology - and the fact that we know ships are going to arrive on schedule.

The old days were, as you say, where things evolved from, basically was if the good old (indistinct) doesn't get stuck on the sandbar coming out of Jakarta port, it will be in Singapore on time. I think the reliability of our service, the state of the equipment being made available to us is state-of-the-art and I think that's reflected in the upturns of the premiums we can achieve in destination markets.

PROF SLOAN: When we went to talk to the meat people, they had designated transshipment times, effectively, so the contract with the suppliers meant the chilled meat can't be on the ship for any greater length of time than a certain number of days. Is the premium market Korea and Japan?

MR HUNT-SHARMAN: The target marks - premium markets - are Japan, Korea, Taiwan, some of the European destinations, Middle East destinations. We also target Canada and the USA. Where we run into problems with our near Asian markets is because we have quarantine, pests and diseases, such as Queensland fruit fly or light brown apple moth or Fuller's rose weevil. The quarantine protocol enables us to do in-transit cold sterilisation for fruit fly, and that's normally 16 days, which gets a bit challenging when the transit time could be 12 to 14 days to Japan or Taiwan or whatever. So we are looking at systems of being able to start our quarantine onshore and then go offshore without disrupting that process. Again, with a perishable product just-in-time delivery is paramount. We also have to make sure the integrity of the handling of that product right throughout the cold chain is up to world standard.

PROF SLOAN: Are we exporting from every container port in Australia?

MR HUNT-SHARMAN: Certainly the east coast ports and Fremantle and, obviously, Adelaide and Tasmania. This is one of the risks. If we lose Part X, I think we'll lose the services to the out ports such as Bell Bay or the Tasmanian ports and move it to Adelaide, because they are really calls on the way. Otherwise, product has to be transported by road or rail much longer distances. Whilst that transport is taking place, the integrity of the product is challenged.

PROF SLOAN: Not longer distances, just by a different way.

MR HUNT-SHARMAN: Yes.

PROF SLOAN: If you go from Adelaide to Melbourne by road, it's pretty much the same distance as if you go by sea.

MR HUNT-SHARMAN: Yes, but the ride is not quite as smooth.

MR POTTS: You mentioned there are state-of-the-art facilities available on these routes with the reefer shipping. That's despite the fact, as you said before, it was at the end of a siding.

MR HUNT-SHARMAN: I think it goes a long way to the fact that many exporters have been in the trade for many years; David's company, John Holman and Co for over 50 years. They have built up long established relationships, not only with their importers but with the service providers, the shipping lines and things like this. I feel that the level of service is acceptable and I think it's very strongly challenged that we have a job to do, as exporters, and we need to have the resources to do that job. David, I might cross to you, if you'd like to reinforce that?

MR HOLMAN: I think the services have been pretty good. We don't want to effect many rail trips or relocations of cargo, because that's where all the damage occurs. If there's going to be a temperature malfunction, it will be in a transshipment scenario, because with frozen meat, for example, there's a big margin for error. With fresh produce, we've got a half a degree margin of error. So every time a container is unplugged and re-plugged, we are either breaching an in-transit cold sterilisation protocol or risking over-maturity of the fruit, and we don't want that to happen.

Our issue is really being competitive in a world environment or being able to forecast for at least a season, because we sell seasonally. Although we are niche suppliers, we do try and run programs with supermarkets overseas. For example, in Taiwan we might run a 16-week program. At the moment, we can get no assurances there's not going to be a surcharge put on; a security surcharge or a bunker surcharge or a currency surcharge.

PROF SLOAN: It seems to me you are happy with the service reliability and quality, et cetera, but I do think you are - - -

MR HUNT-SHARMAN: There's always room for improvement.

PROF SLOAN: Of course. I do think your association has been raising some points about the difficulties of negotiating binding arrangements and the like.

MR HOLMAN: Yes.

PROF SLOAN: Did you want to expand on that a bit?

MR HUNT-SHARMAN: As an appointed secondary body, under the legislation we are required to negotiate with conferences. In recent times - the last five or so years - we've had the advent of discussion groups, which have the ability to have non-binding arrangements between their members. We find that quite challenging to, again, be able to set up long-term programs, to be able to get fixed rates and to be able to protect the small to medium exporters. When we say that, we've set the maximum rate. If you are a large exporter of fresh fruit and vegetables or a multi-industry exporter, such as meat and dairy, grains, et cetera, there is still the ability within the negotiated conference rates to have loyalty arrangements so that the bigger shippers can get recognition for the contribution their business makes to the lines.

Where we find the challenges are certainly the fact that we go into the negotiations after a discussion group meeting has taken place and it's really a lay-down misere before we actually have the opportunity to directly negotiate. All-in rates are a problem because, again, there's no stability. They can impose surcharges, currency or bunker or whatever, without any requirement for previous negotiation.

I think the most important one is the US dollar rate that has now been imposed on us without negotiation, some years ago, whereby the shipping line will set an exchange rate seven days before the first day of loading. We are not a commodity. We are not on the world commodity market, such as meat or grains or whatever. We have a number of small industries and all the transactions, all the purchasing and all the selling is done in Australian dollars. To bring in a variable of the US currency exchange rate is just creating another risk factor in a successful sustainable business.

PROF SLOAN: The sense in which you negotiated that; that wasn't arranged, that was imposed on you.

MR HUNT-SHARMAN: As David said, if he is going to do a forward program for 16 weeks and there are five vessels in that 16-week period, he may have five different exchange rates. He has already sold on a forward price.

PROF SLOAN: I'm sure he will, actually.

MR HUNT-SHARMAN: He is exposed up and down - whatever it is - unless he then goes to the added expense of taking forward cover protection. Then that becomes another charge on top of the margins that you have in your transaction.

MR POTTS: Would you be confident that, if they were required to negotiate an all-in freight rate, that would leave your small exporters in a better position than they

are at present, where there is a rate but then you've got all these different surcharges and the like?

MR HUNT-SHARMAN: I would feel it would give them more confidence to enter into longer-term contracts and longer commitments, again seasonal, or even variable products going into these marketplaces. If you have some certainty of your direct expenses, you can work out your margins without having to allow for fluctuations. That fluctuation at the NCIF price could be the difference between Australia getting that order or not getting that order.

MR POTTS: So it's not so much the level, in a way, it's the certainty of the price that's important for these exporters? In other words, they are prepared to pay a cost to remove that risk?

MR HUNT-SHARMAN: Yes.

MR HOLMAN: Absolutely. All we want is the ability to quote and forecast further out. The lines we deal with - and we deal with most of the lines at some stage through the year - won't give us a fixed or a maximum rate for a period, which is very frustrating. It just means we simply can't quote to our clients without taking some sort of protection. Although you can protect against currency, you can't protect against capital increases, which are still imposed, even though we are paying in US dollars.

PROF SLOAN: Of course, there's a certain irony, because the shipping lines need certainty but they are not actually providing that certainty to their customers. Does that suggest there's not enough competition on some of your lines? Can you not go to another shipping line and say, "I want a fixed price."

MR HOLMAN: No.

MR HUNT-SHARMAN: No, we can't, because of the discussion groups; there's conference and non-conference combined. It becomes a little bit anticompetitive in that light.

MR HOLMAN: If one of the lines has given us a slightly better deal, in terms of something free or dropping a documentation fee, and you tell another line that that line has in fact done that, then they are berated at the next meeting. They ring you up and say, "Look, we've given you something, tried to help you out and we've got to withdraw it because it has been made public."

PROF SLOAN: If I can cut to the chase with some of our proposals, the idea that discussion agreements would become illegal would probably be okay by you?

MR HUNT-SHARMAN: Most certainly.

MR HOLMAN: Yes, it would. Absolutely.

MR HUNT-SHARMAN: It would bring us back to where we were five or six years ago, where there were conferences and there were binding arrangements and there was commitment from both sides to all of those arrangements.

PROF SLOAN: On that second point about confidential individual service contracts, that also would - I mean, you must have some big shippers within your industry.

MR HUNT-SHARMAN: Yes. Again, it has been recognised by all exporters that we are setting a maximum rate and that maximum rate is giving stability to the marketplace and is allowing them to allow for that level. Larger shippers who can get a loyalty agreement or, as you say, a service agreement arrangement are doing that because they have a critical mass or a broad range of product they can ship. The fact they are shipping all year round, whereas we have some specialist exporters who are only in for the stone fruit season or only in for the table grape season, allows for that flexibility within the framework of the conference negotiation.

PROF SLOAN: But with that example that you've just given, it would become illegal if you negotiated that with one shipping line.

MR HOLMAN: We'd enjoy that becoming illegal, because it would mean we could actually sit down with a line and discuss a full spectrum of a service and they could offer a package to us, knowing full well that no-one else - - -

PROF SLOAN: Which would be both binding and confidential to the parties.

MR HOLMAN: Yes.

PROF SLOAN: For the smaller shippers in this industry, have there been specialist freight forwarders emerge who kind of aggregate volumes?

MR HUNT-SHARMAN: I think certainly the freight forwarders offer a role for the new exporter, and it's really part of a learning process to become an established exporter. We certainly recommend the AHEA for any grower who comes to us to look at export to say, "Well, we can introduce you to exporter members." If they feel they want to do it themselves, we certainly strongly recommend they use forwarding agents to find out the implications of them embarking on the venture of exporting, as that has quite a few traps in it. By using a legitimate forwarder, their exposure to that

is minimised. You'll find that, once they have been in the trade for a couple of years and they get the feel for it, they do become official in their own right.

PROF SLOAN: I guess, trying to integrate some of those points you were making with some in your submission, we hear your frustrations about surcharges and the non-binding agreements. I think you had some examples when we spoke about things basically going off and you still not knowing the price.

MR HUNT-SHARMAN: Yes.

PROF SLOAN: So there's quite a lot of frustration in the system. It seems to me the issue of whether regulation can say there will be a fixed price, there will be Australian dollar prices, there will be negotiation in good faith - there is an argument that that kind of government regulation is a quite draconian interference in commercial negotiation. In order to skin that cat, a better way would be, for example, to allow confidential individual service contracts, in which case you could say, as part of that negotiation, "I need a fixed price, I need it in Australian dollars." You know, "I need A, B and C as well."

MR HUNT-SHARMAN: Yes. I think the principle of divide and conquer comes in there a little bit.

PROF SLOAN: I see.

MR HUNT-SHARMAN: By representing all exporters, no matter what size they are, we are putting together, not even a great critical mass but at least a mass of volume of cargo which can be used to negotiate relatively good terms for all exporters and not just the big ones. I think the little ones will become penalised - - -

PROF SLOAN: I guess the point I'm making is that there would be a huge call for us to essentially argue for these various features to be imposed on what are, in many cases, essentially commercial negotiations, and we would be looking to see what other alternatives there are, understanding your frustrations.

MR HUNT-SHARMAN: I think we've got to look at options, but I think the Part X arrangement and the freight negotiation arrangement, pre-discussion groups coming on the scene, has worked well for both sides. It has given security to the shipping lines, the security of cargo being shipped and being available and security of exporters that they can forward plan. Certainly over the last 10 years we have been advocating to all exporters, "Please come up with a five-year strategic plan; plan five years out so we can start making some critical mass marketing decisions so that Australia can be taken as a realistic player and taken seriously."

We go to a number of freight market access negotiations. We get market access and then we don't ship a carton because there has been some other reason not taken into consideration. One of those can also be shipping freight rates, the cost of getting the goods from A to B. We find that the system has worked well in the past, it has been accepted by all sides in the past and it has been binding in the past. I don't think the system has broken; it has only been distorted a little bit with discussion groups. I think if you take it back to the level playing field, if you like, of Part X you would get support from both sides.

PROF SLOAN: So your association is effectively collecting market intelligence from the industry in order to build up a picture of likely trends and demands?

MR HUNT-SHARMAN: It's essential for our exporters to do business that they know what's happening in the overseas market and also what's happening in our home market, as far as supplies and products. Again, getting away from this, whatever is left over, we want growers and packers and suppliers to make a commitment to the long-term growth of sustainable exports. I think the business of hit-and-run transactions is no longer. If you look at the supermarket trade around the world, they are globally working out their supply lines, their supply frames, from southern hemisphere to northern hemisphere, counter seasonal. That's where the bigger consumer markets are. South Africa is getting the input, as is Chile and the South Americans, into Australia and New Zealand at the moment.

PROF SLOAN: Yes, I love those cherries from California in the middle of winter. It was an improvement, wasn't it?

MR HUNT-SHARMAN: I'm chief executive of the Australian Table Grape Association and we've had Californian grapes here for the last two years. They are certainly having a counter-seasonal impact. It's certainly lifting the prices, and we are very happy that consumers are paying \$15 a kilo when they normally pay \$4. We are looking down the barrel of Chile arriving next year, the southern hemisphere, and the prices - - -

PROF SLOAN: No, they are not so good.

MR HUNT-SHARMAN: Not so good. From the point of view of trade, we are no longer on the mainline; we are down the siding from trying to service up into Asia. The challenge is to get the equipment down here in a timely manner. We have a lot of empty containers over at Fremantle. We've then got to bring them over to the eastern side to have sufficient equipment. Those difficulties have been addressed and they're continuing to be addressed, and I think that has been very - - -

PROF SLOAN: Does your association get involved in that issue?

MR HUNT-SHARMAN: Again, as part of the freight negotiations and also with just the exporters ourselves as the AHEA, it's part of our job to ensure that those issues are addressed for all exporters, not just the ones with the problem.

PROF SLOAN: Your bottom-line view on transshipment, is that something you prefer to avoid?

MR HUNT-SHARMAN: It's another situation where, as an exporter, you're losing control. It's bad enough when you put it on a direct shipment from A to B and you know the critical points are going to be loading and discharging. When it's transhipped - and normally it's Singapore at 30 degrees and 95 per cent humidity and somebody forgets to put the container on power for three hours; as David said, we've got leeway of about a half a degree - that's when trouble starts. So the shortest time, direct sailing and the exporter being able to monitor through shipping line where his equipment - his container - is and ensure that it's cleared in the least possible time and fuss. That's the outcome.

PROF SLOAN: Is that just the whereabouts of the container? Can you monitor its temperature? That would be good, wouldn't it?

MR HOLMAN: We've got a new facility now with, they say, internal probes where they put probes inside the produce that are read by the ship's engineer and the reports can come back to the deck telling them if there's a problem pretty much immediately instead of doing a random check every couple of days. Those sorts of things are great but, again, they're a big cost. I think the cost for one container is \$US800. That's a significant increase. It's around 25 per cent of the cost of the freight, but it's something we're prepared to invest in, in conjunction with our customers for certain markets of temperature-sensitive fruit, because we might be shipping a container of nectarines worth \$100,000, where it's justified because we need to meet the in-transit cost realisation, and we might ship a container of oranges worth \$15,000, but that doesn't have an in-transit requirement, so it's not necessary. That's something that we need to negotiate as individual exporters with the lines.

PROF SLOAN: Yes, and that can only be handled at quite a low level, can't it, really?

MR HOLMAN: Presumably, these facilities will continue to improve over time for the reason that you mentioned, that there's more and more fruit and vegetables being moved around the world in seasonal patterns.

MR HUNT-SHARMAN: Modified atmosphere in containers is now available as well, so we've got this technology available. Again, it's a matter of technology

transfer, and another role of the AHEA, apart from freight negotiations, is to keep all the exporters aware of these new opportunities to ensure a good out-turn of their product.

PROF SLOAN: Maxwell, I'm sure you could say that your colleagues have said everything you wanted to say. Is there anything - - -

MR SUMMERS: Yes, David has been stealing most of my lines, I think.

PROF SLOAN: I know, it often happens to me too.

MR SUMMERS: He's a monopolist.

PROF SLOAN: Was there anything, though, you wanted to say?

MR SUMMERS: Yes. I think the big point that we've looked at is that what has happened since the last Productivity Commission inquiry in 99 and now and the common denominator which we keep labouring is discussion groups. They have had an influence on the way we've done negotiations. They have definitely had an influence on the outcomes of those negotiations, and we feel that that's a negative for Part X. A number of the other concerns we've got may be flowing on as a result of discussion groups as well.

It's very obvious that some of the things that were once negotiated are now being imposed on us, and it's probably because discussion groups, or those in discussion groups, have a much stronger market power than they had before, whereas if we were dealing with two or three conferences that are going to the same area, if we didn't like what we got from one conference, we could talk to the next one. But, as David said earlier, when we talk to one, two or three, it's a rubber stamp. The deal has been done before we get to talk to them, so we get the same story from individual lines and from conferences, and the difference in my mind is clearly discussion groups - are allowing them to, under the legislation, share information and to agree things on a non-binding basis prior to any discussions with designated shipper bodies.

MR POTTS: One of the arguments that has been put to us in relation to discussion agreements is that, if you don't allow them in Australia, then the carriers will just undertake them overseas and that the shippers in Australia will be disadvantaged because they won't be able to be a party to that. How do you feel about that?

MR SUMMERS: We have thought about that issue, and discussion groups will occur offshore regardless of whether we legalise it or not. We just feel that it perhaps has to be more covert if it's not allowed under legislation. Prior to the last

inquiry, discussion groups weren't significant and we didn't have the issues that we have today, and I would think that that is an example of what worked and what both sides of the negotiations got from the legislation, and I would expect that if you remove the variable, which is discussion groups, then you would move back towards a situation that we were all very comfortable with several years ago.

I believe that discussions will occur offshore whether we like it or not, but if we allow it under legislation then it becomes quite overt and conferences will be able to openly display the fact that they know what's going on. If you don't make it legal, they can't do that.

PROF SLOAN: It seems to me that one of the keys for you, notwithstanding the freight equalisation situation in Tasmania, competition does help shippers, does it not?

MR HOLMAN: Absolutely it does, that's right, and if the general manager of Line A in Melbourne can ring the GM of Line B, they're going to make the call. If they're not allowed to do it, by the time they can telex and communicate and have a discussion group overseas, nine times out of 10 we ship the cargo. As I said, we work on programs as short as two to three weeks and as long as a maximum of, say, 16 or 18 weeks. So we're fairly responsive in the way we're shipping, and I don't think the lines will be able to get their head around it that quickly. If we put a proposal to a line on a program, and that suits them and they agree to an all-in cost, by the time they get to discuss it it will be shifted, finished.

PROF SLOAN: Often it's said that, in exchange for allowing the shipping lines to collude, you're allowed to collude, but what you're saying is that it doesn't really equal out, does it? You provide some useful information, but you're now saying that a lot of the stuff that you might have negotiated in the past is a fait accompli, and the fact that you can talk to some of your competitors, I guess, about the kind of rates they're getting with shipping lines, is that a big help to you really?

MR HOLMAN: Not really, because if I said to Maxwell as another exporter, "I'm getting a rate that's a hundred US better than you," and he rang the line that he was using, he's only going to call them. They have breached what they have agreed in the discussion group and they're going to pull my rate, so I'm shooting myself in the foot and I'm only going to get the \$100 if I've committed a large chunk of my program to that line.

PROF SLOAN: I was just saying there's a kind of concept in Part X about countervailing power.

MR HUNT-SHARMAN: Unfortunately, the reality out there is we've got all

exporter members but they're all serious competitors against each other and fighting for a very small market share, not only in the marketplace but also from the supply base. We're supplying less than 2 per cent, so there's a lot of backstabbing out there, but in the most gentlemanly - - -

PROF SLOAN: It sounds like a competitive industry. Anything else, Max, you wanted to raise?

MR SUMMERS: I think they're the main things. When you talk about countervailing power, we did read that in quite an amount of detail, and I believe that in the previous situation it did create a greater balance of power. We believe that the lines have the better bargaining position because exporters need the service and, to some extent, it can be a take it or leave it situation, because lines can always sell their services to another commodity group, such as dairy or seafood or meat or whatever the case might be, but exporters have got nowhere else to go. A lot of commodities must go by sea. There are some small amounts of commodities that can go by air, but the cost of air cargo is prohibitively expensive for everything other than cherries, of all things.

So I think the balance needs to be brought back, and that's why Part X is so critical for us to retain because it does need to give exporters the ability to come to the table to talk with lines about minimum levels of service. Part X, as much as anything, is about providing a regular service as much as providing competitive rates. We do need both and we believe that if you remove the rates part of the negotiation you risk spiralling rates that are occurring with surcharges, because at the moment they're outside of the legislation and the shipping lines have discovered - perhaps it's a loophole - that they can impose rates without negotiation and they are inventing, we believe, new surcharges on a regular basis, which is allowing these things to spiral out to a point where we have got some members who can advise that 30 or 40 per cent of their total bill is a surcharge that is outside of the rate that is negotiated. So we believe that it's demonstrating what the lines are prepared to do if it's not regulated in some way.

PROF SLOAN: There's a good weather surcharge and bad weather surcharge.

MR HUNT-SHARMAN: I think one of the other things we have also achieved in very recent times is a single rate for fruit and vegetables. Whereas before we had to buy commodity oranges or apples or whatever, we have now been able to negotiate single rates with the cooperation of shipping lines. So there has been some progress in some areas as well.

PROF SLOAN: I would have thought there was a higher margin on fruit than vegetables. Who wants to eat vegetables?

MR HOLMAN: In fact, vegetables represent a much smaller component in exports.

PROF SLOAN: They're probably more perishable.

MR HOLMAN: Plus China is a huge producer of vegetables in Asia, and Malaysia produces a lot of vegetables. There is just a little bit less than demand.

PROF SLOAN: And who would pay a premium price for a carrot? Thank you very much for your contribution. It is a great help to have people who are actually involved on the ground and hear your point of view. I'll now call a break for lunch. We have got Brent Davis, who was to appear in Sydney, on the phone at 1.30 so if anyone wants to come back and listen to our conference call with Brent Davis, he is of course the Australian Chamber of Commerce and Industry representative.

(Luncheon adjournment)

PROF SLOAN: I've got Gary Potts sitting beside me, and we've got an audience too.

DR DAVIS: Good.

PROF SLOAN: So you're on stage. I hope you're feeling better.

DR DAVIS: Just a bit, but not as well as I would like to be.

PROF SLOAN: Okay.

DR DAVIS: If I break into coughing, I hope you'll excuse me.

PROF SLOAN: Okay. Would you like to state your name and organisation for the record?

DR DAVIS: Dr Brent Davis. I'm the head of the international division of the Australian Chamber of Commerce and Industry. We're the national voice for the state and territory chambers and another 35 industry associations around Australia.

PROF SLOAN: Thanks very much. Would you like to just start off by making some opening remarks on this inquiry?

DR DAVIS: Thank you very much. Again, my apologies for missing the inquiry's sittings in Sydney last week, with ill health keeping me somewhat incapacitated and demoralised, but thank you for accepting at least some presentation through the telephone. The chamber made a primary submission to the inquiry, which we believe is quite timely of itself and, of course, a necessary part of the federal government's legislative review program under the national competition principles. The chambers of commerce, for those of you who are aware of our history, have long been committed to international trade and commerce and our history, going back 4 or 5 hundred years around the world - certainly 200 years in Australia - shows that sea transport is an integral part of that international trade and commerce. I won't cite the numbers. The commission, in its report, has given us some good data sets on how important sea transport is for the Australian economy and for manufacturers and suppliers of commodities; probably a bit less so for the sellers of services.

In preparing our submission, we went out to our members and asked them for their views. We were very pleased with the response we got from those who are shipping users. We do have the carriers amongst us, but took the view that the carriers have another association that can represent their voice, so we chose to represent those of the users. We are pleased with the draft report and we concur with its core points and recommendations, primarily that Part X of the Trade Practices Act

should be repealed and authorisations should be pursued under Part VII of the Trade Practices Act. The reasoning the commission used is that it's in parallel to that which the chamber adopted, which is if these arrangements by the ocean-going liner shippers and others in that industry do deliver public benefit then they should be required to demonstrate it. If they do deliver public benefit, then no doubt they will be able to demonstrate it.

We see Part VII as a transparent process and we observe also that in the common law the aviation industry has put itself before the ACCC and its predecessor organisations for Part VII-style reviews, and many of the practices that the liner shipping industry is looking to defend have been authorised in the aviation industry. So we don't regard liner shipping as a special industry that requires a whole part of the Trade Practices Act to itself but, rather, experience shows the ACCC and the judicial processes can deal with Part VII in the transport sector. They're my remarks there.

PROF SLOAN: Thanks very much, Brent. Would you see, though, that there might be some transitional issues in terms of repealing Part X and moving to Part VII? We floated some of those and it looks fairly obvious to us that, essentially, everything would be probably given some interim authorisation, and then what would happen would be there would be a sort of prioritisation of the review of those agreements. Is that something that - - -

DR DAVIS: Yes, we would agree with that. In our primary submission, we proposed a transitional mechanism. It would be highly unreasonable to both the shipping user and the shipping carriers to repeal Part X on one day and then basically just leap into Part VII on the next. I think that would be a quantum leap too far for all concerned. We would be quite comfortable with a three-year transition period, which would basically say from a given date, so to speak, the Part X window would close and there would be no more registrations under Part X. Anyone coming forward from that day on would be expected to go through a Part VII process.

The second part of that would be those who already have registrations under Part X. We would be quite open to, say, a three-year transition period, where all of those who are party to an existing Part X registration would be given three years to get an authorisation. At the end of that three-year period, if they have a Part VII authorisation, they would comply with the terms and conditions of that. If they've chosen not to go that route, then the protections of the TPA would not be available to them.

PROF SLOAN: We seem to have had a bit of a disjunction between what you might call the sort of theory and the practice and some participants, I think, are worried about the ACCC processes and the fact that it seems costly, delayed,

cumbersome, subject to appeal. I guess the ACCC has a view about that more generally, and whether you would like to comment also in the context of some of the changes that are likely to come into force.

DR DAVIS: The liner shipping industry unquestionably has a special and privileged position and, of course, no-one in that industry generally would like to hand back such a privileged arrangement. Those of us with longer memories of the reform process would almost get a sense of *deja vu*, if you will, with many of the arguments put up by the liner carriers. "Quite simply, it's too great a change; the industry won't survive; we'll have exits and the like." Those of us with longer memories would say, "Yes, well, I heard that when we talked about cutting tariffs to the motor vehicle industry; when we talked about reform to textiles, clothing and footwear; when we talked about structural adjustment of government monopolies." So it tends almost to be like Christmas carols. They tend to come down fairly regularly, these sounds.

We know that the process for those involved in the liner shipping industry will be more demanding, going through Part VII than Part X, but the liner shipper users do not exist for the liner shipper carriers; that is, the users don't exist to support the carriers. The carriers exist to support the users. The act is not there, as Mr Samuel is wont to point out - the chairman of the Commission - to protect competitors, it's there to protect competition. In that respect, the liner carriers are just coming into conformity with everyone else.

MR POTTS: Brent, you mentioned in your introductory comments that you sought the views of your members, as users of freight services, in preparing this submission. We've met with a number of groups that represent shippers and exporters, who have given us their views on the arrangements, and many of which are in support of continuing the Part X arrangements with some modifications. Could you just indicate for us the sort of members that you're talking about in your group?

DR DAVIS: Our primary decision group on this matter is our trade committee. That brings together the leadership of the trade committees of our state and territory chambers of commerce. They go out and consult with the shipping users - and I'm leaving the carriers to one side - in two forms. One, a number of the users are within their respective trade committees. In a number of cases, we provide a secretariat for the shipper councils in different states and territories and in other places we're just substantive members of those shipper councils. When we formed our views, if you like, we market tested them, and the message that came back to us overwhelmingly is, "Yes, Part VII is the way to go."

MR POTTS: Would these users mainly be manufacturers, for instance, or any of them be exporters of agricultural products, for instance?

DR DAVIS: I can't give you a precise breakdown but, if I could hazard a guess, I would say it's 80 per cent manufacturers, 20 per cent possibly in the commodities area.

MR POTTS: Right. Good.

PROF SLOAN: Brent, one of the premises on which Part X is based then, which it's said to deviate from other regulation overseas, is the role of countervailing power and the primary and secondary designated shipping bodies and the relative immunity of shippers to consult and share affirmation and the like. We've come to the conclusion that this countervailing power basically doesn't work well and we can't really see a way round it working well and, I guess, argue at the end of the day that the shippers' best interests would be best served by increased competition. But I guess you've got a kind of interesting handle from the point of view of being on the side of the countervailing power of the shipper, I think, because the ACCC is involved in some of these secondary shipping groups, aren't they?

DR DAVIS: Yes.

PROF SLOAN: I mean, what's your view on the - - -

DR DAVIS: I can remember a number of years ago sitting down with a board member of the chamber who was on a shipper users' group, and this chap was not what you would regard as a wilting flower by any stretch. He said to me, when we were talking about these user groups, "Yes, well, the carriers come and talk to us; I'm never quite convinced that they're actually listening to us; whether they hear what we have to say is another matter entirely." I asked him why he went along and he said, "If I don't go, then we're going to hear even less." I think the Commission in its draft report alluded to the fact that these dialogues go on, but the words may go past each other. I think that's a reasonably good description of a situation. There is a process in place, but how much hearing goes on is another matter entirely.

MR POTTS: Have you perceived any sort of change or hardening of attitude towards the Part X arrangements in relation to your user members?

DR DAVIS: No. We asked them whether they're content with the arrangements. Some of them, yes, do like having a reliability of service, and then we go on and say, "But, you know, if the price were to fall by 30 per cent, how would you feel about that, if there was a price for service trade-off?" A lot of them are attracted to that. Yes, it's nice to have a reliable service, and if you can have a more competitive or, if you like, less continuous service for 30 per cent less, I think a lot of them would jump at that opportunity.

I know some of the carriers have said that these arrangements are essential for continuity of service. Again, we see a lot of parallels in the aviation sector. The original *raison d'être* of Part X that liner shipping was unique, I think, just doesn't hold up any more.

PROF SLOAN: Sitting in my position, I'm confronted with the proposition that every industry I look at is unique, so we have to kind of get to the bottom of that always, but I guess there is one issue which in some ways - "unique" is always a strong word - is the fact that this is the provision of international services to Australia by overseas-owned companies, and I think one of our conundrums is that, if we were to repeal Part X, would not the carrying-on of these agreements essentially shift to overseas jurisdictions, where such behaviour is allowed under the law? So there's that whole issue of international jurisdiction. I'm not trying to lead you on - you may not have thought about this - but if you've got any comment on that, that would be helpful.

DR DAVIS: If the carriers truly hold to that view, then they would have no objection to the repeal of Part X; that is, they will get their legal protection somewhere else. They will engage in their collusive arrangements somewhere else, in which case then the demise of Part X is really just a marginal issue for them, in which case it seems to suggest that they're coming around to your thinking, which I doubt. I think the question of enforcement across borders is a broader more complex issue of competition law. We do know something about this, because of our background in competition law here and some extensive work we've done with the ACCC on mutual legal assistance in competition law and some work we've done within the International Chamber of Commerce on the enforcement of decisions across borders. The essential point, though, remains that, if the carriers hold to that view, my first remark is still relevant. They wouldn't care about the demise of Part X. Secondly, I think the more challenging issue is that you will see cross-border enforcement anyway. Mr Samuel has certainly marked that down as one of his priorities during his term.

MR POTTS: The work that you've done yourself, does that throw any light on the issue in a practical sense?

DR DAVIS: In cross-border enforcement? Ostensibly, you have to have some sort of legal arrangement with them. We have a mutual legal assistance treaty in competition law with the United States of America. I believe there is some looser form of instrument with the European Union. I believe there is something one step below that with the government of Japan. So I should think if the Australian government was to find a cartels-type arrangement set up and operating in another country, say, for the United States, getting cooperation would be fairly

straightforward; with the European Union, similarly straightforward; with some other countries, maybe a little bit less so. But, again, it would be a question of whether it was an effects test or an intentions test.

If the change in the act moved towards an effects test, it wouldn't matter where the arrangement was set up, because the effect would be felt in Australia. Therefore, the parties to that arrangement - where the effect was felt in Australia, the matter could be prosecuted in Australia. If it was an intense test, where the intention was the fulcrum issue, then you may have to look for some sort of across-board cooperative arrangement.

PROF SLOAN: That's very useful. We do have a sort of second-best option in the report, which is to modify Part X. There are a number of features of it, but the key features are that discussion agreements would be abolished and we would provide statutorily, for confidential individuals, service contracting. Have any of your users given any feedback about those options?

DR DAVIS: No, that one didn't get the response. I don't feel that we're able to make much of a contribution to that point, except to notice that we believe the United States is going down this track and we will be keen to watch to see how that develops.

MR POTTS: What, there is some suggestion that the United States might not allow discussion agreements, do you mean?

DR DAVIS: No, the individual contracts.

MR POTTS: Yes, I think we've gone down that route.

DR DAVIS: Yes. The difficulty with not allowing discussion agreements I guess is, if you like, you're picking the lowest-hanging fruit. As the commission rightly observes in its report, and others as well, you can have discussion agreements, you can have conferences, you can have consortia. It's ostensibly a similar description for much the same fruit, and we ponder why would you, if you will, get rid of red apples, green apples and leave all the yellow apples. I know it's easiest to go for the lower-hanging fruit. The greatest dividends tend to come from the highest-hanging fruit.

PROF SLOAN: I guess part of our thinking was that it was the very low compliance route to what, on our priority, looked like the agreements are least likely to generate net public benefit. That was our logic.

DR DAVIS: In which case one would then put - your compromise therefore

suggests to me that the conferences could stay under Part X, the consortia and the discussion agreements would go under Part VII.

PROF SLOAN: In the course of our travels and our public hearings, there have been some other issues raised, and I'm again trying not to lead you on, because they may not have been raised by your user groups, but the interface with stevedoring has been an issue that has been raised, which is actually covered by Part X, because Part X provides the requirement that the shipping lines negotiate with the stevedores.

DR DAVIS: Yes.

PROF SLOAN: I think some of the users have the feeling that the shipping lines don't really have the right incentives to negotiate a good deal with the stevedores.

DR DAVIS: Yes.

PROF SLOAN: Has that sprung up?

DR DAVIS: No, but we have dealt separately with the question of the supply of stevedoring services within the ports. We notice that Part X, if you like, washes on to some of those portside services as well, but in our thinking on stevedoring most of our work has been focused on how one gets more competition within ports and between ports and I guess the question of how the rail system promotes competition between ports. But in this matter, no, we haven't looked at the stevedore intervention.

PROF SLOAN: Have there been other issues that have been raised more generally in Part X, Part X being a fairly narrow topic?

DR DAVIS: No, we tended to focus pretty much on the Part X issue for this reference. We tended to sort of just pick the critical issue and devote our attention to that one.

PROF SLOAN: That's not a bad strategy. Okay, Brent, I think those are the main things we wanted covered and I hope we haven't got you out of your sick bed in order to get you to the phone.

DR DAVIS: Not at all.

PROF SLOAN: No. That's what they did to Ziggy Switkowski, I think, so you would be in good company.

DR DAVIS: As long as I'm still in my job tomorrow, then I will be content. When

he answered the phone, there was a bit more at risk.

PROF SLOAN: Yes. Okay, Brent, thanks very much for your involvement. It has been very useful.

DR DAVIS: My pleasure.

MR POTTS: Thanks, Brent, good.

PROF SLOAN: Thank you. I guess there's no-one else who wants to say anything - and I do have to ask that - so I declare the hearings closed. The transcript should be available pretty soon, I guess.

AT 2.00 PM THE REVIEW WAS ADJOURNED ACCORDINGLY

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