Submission to the Productivity Commission's

Review of Part X of the Trade Practices Act, 2004

Prepared by Shipping Australia Limited, 18 August 2004

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KEY MESSAGES

- Efficient and cost effective international liner shipping underpins the ever broadening global economy and the continued prosperity of the industrialised world. Such shipping, due to its inherent characteristics has been recognised worldwide as requiring a specialised regulatory regime.

- Australia as an island nation is critically dependent on international liner shipping for its continued economic growth and prosperity even though in global terms it would account for less than three precent of the world's container trade.

- Being far removed from major trading lanes and having relatively low volumes means that counties like Australia need a regime which envisages the achievement of the public interest objectives set out in Part X ie. to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive.

- A Part X type regime is required as the industry suffers from the potential for destructive competition eg. since the liner shipping industry has considerable fixed but avoidable costs, the existence of excess or reserve capacity gives rise to short-run price competition that does not cover total cost. As a result carriers either move their vessels to other trades or go bankrupt. Since this could lead to a shortage in capacity, prices may rise considerably drawing in new capacity or operators in the market. Finally, capacity would increase to the original level of excess capacity, which then would trigger a new cycle of "destructive" competition which renders regular schedules services impossible, hence, market failure occurs.

- This would lead to an unstable operating environment where chasing lowest costs can result in inefficiency across a range of areas:

    - Reduction in scope of services to an absolute minimum

    - Implement less viable service level reductions

    - Targeting lower cost customers and lower cost/high inducement ports

- The Productivity Commission's conclusions in 1999 that Part X is a low cost regulatory regime that has delivered Australia an efficient, stable and competitive international liner shipping service is as valid today as it was then. The Commission recognised the significant checks and balances in the Part X regime to ensure a fair and economically efficient balance between supply and demand for such services and concluded that no distinction should be drawn between Conferences and Discussion Agreements; the latter being a more modern form of the Conference system.

- Any regulatory system can be improved and SAL recommends a series of measures that could be adopted within the existing legislative framework such as Discussion Agreements being bound by an agreement with a designated shipper body as far as maximum rates are concerned and if Part X is to be amended, SAL recommends a number of legislative changes to improve its operation.

- As the independent panel of eminent economists appointed by the EU Commission last year concluded:

- Liner shipping conferences are not “price setting cartels”
- They play a complex role against a background of difficult competitive conditions inherent in liner shipping
- They function as a platform to discuss prices and related cost levels and
- They have virtually no ability to collectively raise rates, may even foster more competitive pricing in the market as a whole, and reduce freight rate volatility.

- For these reasons, Part X should be retained!

OVERVIEW

It is the unanimous view of all the carriers on whose behalf this submission is made that the recommendations arising from this review must lead to the facilitation and support of Australia's international liner trade valued at over A$115 billion (2003) and not result in any inhibition to its continued growth.

There have been notable changes in the international liner shipping industry since the last review was conducted including the growth and influence of Discussion Agreements, increasing competition and fluctuations in capacity to meet growing demand on specific trade routes and fluctuating rate levels. Transhipment opportunities continue to grow and many of these latter developments were also present in the lead-up to the 1999 review by the Productivity Commission. **The fundamental requirements for a Part X type regime have not changed in terms of the need for information exchange on market conditions as well as rate setting capacity and the ability to cooperate to offer the magnitude, reliability, flexibility and scope of service required at internationally competitive freight rates.**

Part X Determines the Public Interest

The Productivity Commission (PC) in the Issues Paper for this review refers to the Australian Government's guiding principle for legislation reviews ie. the "onus of proof" is on those recommending retention of legislation with anti-competitive effects or costs for business. The Commission goes further to interpret this principle "That is, the advocates of Part X must make the case, and present supporting evidence, that permitting and registering conference agreements is of net benefit to the Australian community as a whole, and that any net benefit would only be achieved by legislatively authorising conference agreements (rather than, say, selective authorisation under Part VII). If such a case is not made, Part X should be repealed."

This approach raises a number of issues, fundamental to this review. The underlying assumption is that Part X has anti-competitive effects or costs for business. Presumably this means unreasonable costs for the goods or services supplied.

This submission will clearly show that the industry has been and remains very competitive and there is significant value in the services provided which is often recognised by both groups of and individual exporters. More importantly, the Commission predisposes that the representatives of the international liner shipping industry in Australia must prove net public benefit to the Australian community as a whole. The carrier's case has indeed been made and supports evidence presented in this submission that there is a net public benefit. However, that advocates for repeal have a corresponding responsibility to present a case with supporting evidence (not just take it as axiomatic), that the present regulatory arrangements, with their built in protections and limitations, are producing harmful results. The Productivity Commission and status quo opponents, as well as status quo proponents, must be required to make a clear and concrete affirmative case to support their proposed policy.

The PC view does not recognise what is, in fact the essence of the Part X regulatory regime – that the public benefit test is included in the regime itself. The Government has set out what it expects the regime to deliver for the benefit of the community, especially the trading community, including the following:

The objectives of Part X are:

- to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive;

- to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories;

- to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade; and

- as far as practicable, to extend to Australian importers in each State and Territory the protection given by this Part to Australian exporters.

There is another objective contained in Part X which protects and supports Australian liner shippers (both exporter and importer) and this is, "Liner cargo shipping services provided under registered Agreements must be:

a) Efficient and economical; and

b) Provided at the capacity and frequency reasonably required to meet the needs of shippers who use, and shippers who may reasonably be expected to need to use the services."

The Australian Government determines the public interest. This was recently reinforced by Dr Peter Shergold, Secretary of the Department of the Prime Minister and Cabinet[1]. "Certainly, a good public servant will seek to distinguish national interest from amongst the plethora of particular positions advocated by interested parties and to have that judgment inform the development of policy; but it is the Government alone, who must regularly face the prospect of electoral retribution, who decide on national interest."

With the growth of Discussion Agreements and the fear (in our view unsupported by the evidence) that there could be a misuse of market power, the Government responded, in part, by amending Part X in 2000 to provide for the ACCC initiating its own review in exceptional circumstances ie. where there is the perception that there could be unreasonable increases in transportation cost and/or unreasonable reductions in transportation services; similar provisions exist in the US Shipping Act 1984.

The EU Commission during its recent review of Regulation 4056/86 appointed an international team of expert maritime economists associated with Erasmus University in Rotterdam lead by Professor H. E. Haralambides. The group was requested to summarise the submissions received and to analysis the economic issues related to conference activities and ocean freight rates. The group's original statistical analyse of freight rate stability concluded that liner shipping conferences:

- Are not "price setting cartels"

[1] "Once was Camelot in Canberra? Reflections on Public Service Leadership." Sir Roland Wilson Lecture 2004 Dr Peter Shergold, Canberra 23 June 2004.

- Play a complex role against a background of difficult competitive conditions inherent in liner shipping

- Function as a platform to discuss prices and related cost levels

- Have virtually no ability to collectively raise rates, may even foster more competitive pricing in the market as a whole, and reduce freight rate volatility

The team recommended that the appropriate way forward was to ensure a regulatory policy for liner shipping that maintained a limited anti-trust exemption while at the same time ensuring that conditions were in place to safe guard the longevity, sustainability and success of liner shipping operational alliances. Being neutral and independent, this is the latest data-supported authoritative study of liner Conferences and their economic impact.

Criteria for the Regulatory Regime

A review of the operation of Part X over its thirty-eight year history will show that these national interest objectives have been achieved by a cost effective and light-handed system of regulation and have been implemented in a manner compatible with the regulatory regimes of our major trading partners. Being made subject to Part VII of the Trade Practices Act would not result in a lower level of regulation, but in fact would significantly increase the level and cost of regulation of the international liner shipping industry serving Australia. Authorisation would have an uncertain outcome and, indeed, the ACCC has power to review and withdraw an earlier authorisation if it believes that there has been a material change in circumstances. This will create uncertainly for the shipping industry and increase, rather than reduce, the risk of investing in the Australian trades. Authorisation proceedings are seen to be slow, expensive and inflexible, and each time a Conference Agreement is altered there would be a need for a new authorisation. Difficulties would be experienced in obtaining the necessary authorisation for the ability to collectively discuss and, if necessary agree rates, which underpins Conference and Discussion Agreements. The authorisation process would not be compatible with the type of regulatory regimes that exist under the laws of our major trading partners and could well lead to disruption rather than facilitation of our international liner trading arrangements.

Any system of regulation should also meet the following three major criteria:

a) **Certainty of application**. The provisions of Part X are well understood and the regime has encouraged the massive investment of billions of dollars in the Australian international liner trades, especially given the technologically advanced vessels and highly specialised equipment employed. The effective automatic authorisation characteristic of Part X, subject to the threat of action being taken if there is misuse of any market power, has been the major reason for its success.

b) **Flexibility**. Part X has proved itself in dealing successfully with the many difficult commercial issues that arise between shippers and shipowners from time to time without the need for direct Government intervention on a day to day basis. In the last ten years there have been only four major and formal investigations by the ACCC, and two of those have involved one trade only. The Part X framework which encourages commercial resolution of disputes is well geared to meet the many challenges that arise in the international liner shipping market.

c) **Efficiency**. Part X is a relatively low-cost form of regulation, with a A$570 registration fee per Agreement, and it is understood that there are approximately sixty Agreements registered at the present time, ie. a total of A$34,500 compared to A$450,000 if authorisation has been sought for each of those Agreements at A$7,500 per authorisation. Authorisation fees would thus make the direct regulatory cost 13 times what they are today but there would also be additional substantial indirect costs far outstripping the costs of the current regime. Given the monitoring and oversight by the Australian Peak Shippers Association, the Importers Association of Australia, other shipping groups and individual shippers, Part X provides much needed transparency of operations under these Agreements, particularly in terms of minimum service levels and the impact on shipper's day-to-day operations.

Conferences/Discussion Agreements Support an Efficient International Transportation Industry

The Issues paper refers to an OECD report produced in 2002[2] that, inter alia, concluded "that it had not found convincing evidence that the practice of discussing and/or pricing rates and surcharges among competing carriers offers more benefits than costs to shippers and consumers." SAL has sent the Commission separately a complete rebuttal of these arguments provided by the World Shipping Council (WSC)[3] including the comments "to operate as an effective pricing cartel - as the Report frequently implies carriers do – agreements would need to be able to accomplish four central tasks:

- Predict and prevent the provision of new capacity by non-members
- Restrict how much capacity incumbent lines make available to the market
- Establish each Agreement member's capacity quota, and
- Detect and prevent independent pricing and contracting decisions by members.

Nowhere in the Report is this sort of structural approach to evaluating Conferences and Discussion agreements addressed. Even in instances where such areas as regulatory and economic barriers to entry are mentioned (eg. Table 3.1), the absence of these critical conditions are neither addressed nor analysed. The report simply ignores these factors."

The WSC paper also includes the following comments which, with the exception of the references to expert Government agencies to handle any complaints or problems, are covered under the Part X regime:

"The (OECD) Report states in paragraph 8 that the purpose of regulatory reform is to create regulatory regimes that do not create barriers to trade, investment and economic efficiency, do not reduce innovation, do not waste Government resources, and do not favour uncompetitive economic factors. The Report fails to acknowledge that the existing liner industry regulatory

[2] OECD 2002, Competition Policy in Liner Shipping, Paris
[3] World Shipping Council's Analysis and Comments on the OECD Secretariat's paper, "Lines Shipping Competition Policy Report" December 2001

regime is fully successful in this regard. In fact, it produces precisely those characteristics that are desired in an international transportation industry, namely:

- No regulatory barriers to entry
- A wide array of competing carriers from which shippers can choose
- Price competition which the report (paragraph 84) concedes is driven by supply and demand
- Commercial freedom for shippers and carriers to negotiate individual, confidential contracts
- Ample capacity to handle normal trade flows, peak season or surge demand, and the long-term growth of trade
- Quality service and a range of services from which to choose
- Technological and organisational innovation
- Adequate investment in the continuous improvement of the transportation infrastructure
- Expert government agencies to handle any complaints or problems, and
- Regulatory policies that are internationally accepted and understood.

Other than its dogmatic preference for an alternative regulatory theory, the Report fails to document a problem in the existing regulatory regime, and its reference to other regulatory reforms is inapposite."

The Issues Paper for this review also refers to the principles proposed by the OECD and its recommendation that member countries could use these principles to guide further assessments of the validity of the anti-trust exemptions in this sector. The WSC views, in this regard, are fully supported by SAL and are worthy of being taken into account. They are repeated in Attachment D to this submission. The OECD offered these principles as a way forward (refer – paragraphs 206-215) but paragraph 214 is especially interesting as it says the three principles arrived at by consensus "can, and are meant to, co-exist side-by-side with a regulatory regime that continues to extend anti-trust exemptions to price-fixing and rate discussion in the liner shipping sector." Thus the OECD final report's consensus-based principles are, in effect, the true "emerging trend", ie. retain anti-trust immunity and focus on strengthening the use of individual contracting and contract confidentiality.

International Liner Shipping has Special Characteristics

International Liner Shipping has special characteristics which need to be specifically addressed when considering their treatment under national competition policy regulatory regimes. Naturally the industry shares some characteristics with other industries but the combination provides a uniqueness that necessitates the application of some limited exemptions for rate setting and collusion.

The reason is not that the viability of the industry is threatened by an even higher level of competition involved if such exemptions are withdrawn as it can reorganise to cope. However, the industry cannot do that and still be expected to provide comprehensive, all-embracing scheduled liner services irrespective of fluctuations in demand and thus utilisation levels, meeting port-call and equipment level requirements, IT applications, providing fast transit times and regular, on-time sailing etc. This is particularly important in the so-called "long and thin" North-South trades. In other words, those trades characterised by relatively low volumes but long sea voyages. Australia (and New Zealand) are at the end of long line haul trades and so do not have many carriers passing by the door as would be the case with Singapore.

Put another way, the industry is characterised by:

- High fixed costs
- "lumpy" supply (ie. capacity must be added or withdrawn in large units such as one or more whole vessels)
- "long-life" capital assets, irrespective of ownership
- Low marginal costs/relatively inelastic demand for services (reductions in freight rates rarely increases demand)
- Inelastic supply (eg. need to meet peak demand)
- Positioning of container stocks (ie. empty containers) can mean the difference between a profit and loss because there are chronic trade imbalances
- There is a requirement to service all required trade lanes to meet global service contracts and tenders of multinational manufacturers irrespective of the profitability of some individual legs
- Provision of high cost refrigerated and other specialised equipment;
- Contestable market (entry can be on the basis of buying slots on vessels operated by other carriers).
- Dealing with market distorting Government subsidies of one sort or another

The results of an unstable operating environment where chasing lowest costs can lead to inefficiency across a range of areas are:

- Reduction in scope of services to an absolute minimum
- Implement less visible service level reductions eg. delayed maintenance and dry-docking, longer customer response time, lower level/delays in supply of containers which may not be at the required quality
- Targeting lower cost customers and lower cost/high inducement ports

It should be noted that the sudden withdrawal of services either totally or in part can lead to serious disruptions such as:

- Vessels and/or equipment redeployed at short notice to more “lucrative” trades

- Vessels arrest for non-payment (eg. the collapse of he ABC Container Line left shippers stranded and many had to wait over 4 months for recovery of cargoes at considerable extra cost).

- Shippers disadvantaged by have to quickly look for substitute services.

The main submission refers to the imperfections in the market place that lead to surplus capacity including vessel operating subsides, ship building subsides, taxation incentives, low scrapping rates etc.

Since the liner shipping industry has considerable fixed but avoidable costs, the existence of excess or reserve capacity gives rise to short-run price competition that does not cover total cost (‘destructive price competition’). As a result carriers either move their vessels to other trades or go bankrupt. Since this could lead to a shortage in capacity, prices may rise considerably drawing in new capacity or operators in the market. Finally, capacity would increase to the original level of excess capacity, which then would trigger a new cycle of ‘destructive’ competition which renders regular scheduled services impossible, hence market failure occurs. This is particularly relevant in the longer thin North/South trades.

Comparisons have been drawn with the rail industry and air freight which has been deregulated in Europe. There are many differences between international liner shipping and the rail industry and in fact, more differences than similarities. In relation to air freight, a very high proportion is carried in the bellyhold of passenger aircraft and capacity excesses are constrained as a result of the Government to Government air service agreements. The Australian Government currently has over three thousand of these agreements in force. As mentioned above, the lack of control over capacity is a continuing challenge for international liner shipping in terms of maintaining a high level of scheduled services while dealing with rapid and regular swings in business cycles.

The Productivity Commission was persuaded in the 1999 review of Part X that liner shipping should be treated differently from other Australian industries because:

- international liner shipping is an imported service for Australia. If Australia, as a comparatively small user of international liner shipping, were to impose comparatively onerous regulatory requirements on (some of) these imports, reducing the profitability of Australian trades relative to other trades, service levels could decline. Doubtless other forms of service would expand to fill the gap in the market, but it is difficult to see why this would promote the national interest if conferences had been providing a service valued by shippers and providing that service efficiently;

- uniformity of regulation is not an end in itself — the ultimate objective must be a regulatory regime which best serves the national interest.

- while it is desirable that no industry or sector of the economy is given special favours which may result in resource misallocation, inefficiency or undesirable income transfers, virtually all liner shipping to and from Australia is provided by foreign

carriers who use very few Australian resources. The major potential for resource misallocation is if Australian shippers cannot access adequate quality liner shipping at competitive rates.

SAL would support these conclusions. The appropriate goal of liner shipping regulation is to ensure that Australian shippers have adequate access to quality liner vessel services at competitive rates, both now and in the future. That can be - and is currently being - achieved without producing resource misallocation, inefficiency, or undesirable income transfers. Current regulations encourage the continued offering of liner services to Australia, which services are generally provided by foreign carriers, in a manner designed to advance the long-term interests of Australia's importers and exporters and the national economy as a whole.

Regulatory Outcomes

Regulatory outcomes have to be measured by the general shipper and shipowner satisfaction levels. This submission addresses the complaints recently raised by shippers in one inwards trade and over recent years by APSA regarding the Discussion Agreements and Terminal Handling Charges (THC's). It is important to recognise that the full application of Part IV of the Australian Trade Practices Act would not be a case of deregulation but would result in an increased level of regulation as far as this industry is concerned.

The problems that will arise should Australia seek to apply its law in the form of Part IV, extraterritorially, is covered in an opinion by Professor James Crawford, a world renowned international trade lawyer, which is attached to this submission.

Cooperation between countries seeking to combat breaches of competition law is completely different to the conflict of laws issue that would arise should a country with less than 3% of international container movements seek to impose a regime in Australia completely at odds with a globally recognised regulatory regime in terms of basic exemptions.

Many countries seek to regulate both the inward and outward trades, and this is causing confusion as well as increasing the potential for jurisdictional conflict. To resolve this problem, countries should concentrate on regulating the outwards trades, or at least recognise the paramount responsibility of enforcing the regime in the country of export.

Professor Mary Brooks[4], in her latest publication states, "…the nature of competition in the industry has moved beyond pricing. So too must the policy focus. It must explore service competition and network competition. Traditional concepts do not seem to adequately address the global market place today." Furthermore, she advocates that because there has not been convergence in the policies applied to international liner shipping or the application of regulatory regimes, there is a desperate need to find common ground for increased international harmonisation as national policies are no longer appropriate in this global industry. SAL agrees fully that the policy focus must be on the combination of pricing, service and competition and that international harmonisation is indeed an important objective.

[4] Professor Mary Brooks, "Sea Change in Liner Shipping – Regulation and Managerial Decision Making in a Global Industry", Centre for International Business Studies, Dalhousie University, Halifax, Nova Scotia, Canada. Pergamon 2000

It is recognised that the OECD's Maritime Transport Committee[5] has achieved some measure of agreement on principles regarding the promotion of compatibility of competition and policy as applied to this industry, such as the need for free and fair competition, maintenance of market access, economic efficiency and transparency of laws, and international compatibility. However, we do need to make the promotion of compatibility a reality and work towards developing some form of international agreement that might guide national regulators in this sector. At the very least, regulators should be ready to consult fully with their colleagues in other countries before they make decisions that would impact on those overseas markets.

It has been suggested in the past by some opponents of the current regime that Part X could remain with the price setting exemption withdrawn. This proposal completely overlooks the importance of the price/service combination and it should not be assumed that the present operation of consortia and service on time/volume conflicts would be the same if this occurred or if Part X was terminated.

Furthermore, Minimum Service Levels provided by an individual consortium would be negotiated within a vacuum because it would only be a relatively small part of the overall level of services provided in any one trade lane. The whole rationale for a Part X-type regime would be undermined. There have been no face-to-face meetings with the Australian Peak Shippers Association (APSA) to negotiate minimum service levels under umbrella agreements let alone consortia agreements and not once since its formation has the Importers Association of Australia (IAA) sought to negotiate minimum service levels.

The countervailing power of shippers does work under Part X and recently there was a successful negotiation of a General Rate Increase in the Australia to Europe trade involving APSA. In addition, in the past APSA has been successful in negotiating outcomes that required carriers to depart from previously agreed negotiating positions.

Recommended Improvements to Part X

Any system of regulation can be improved and so can Part X either in an unamended form or by legislative amendment that will meet a number of concerns raised by shippers over the last few years.

Non-legislative Improvements

The operation of the present provisions of Part X could be improved by:

a) The Minister of Transport and Regional Services seeking undertakings from parties to Discussion Agreements that the Agreement be amended so if agreement is reached with a designated shipper body on specific issues, being maximum rates or increases for particular commodities, formulae for surcharges and other terms and conditions of service then the parties will collectively adhere to that agreement for whatever period it covers and not deviate from it. This would overcome the problem identified by some shipper groups that negotiating with Discussion Agreement members was not fruitful

[5] OECD Maritime Transport Review 1987.

because they could only reach agreement collectively on a non-binding consensus basis which may not last for very long. It is acknowledged by parties to Agreements registered under Part X that increased communications and consultation can only lead to better outcomes for all and they are willing to play their part in promoting that result.

b) As representatives of the Minister, senior officers from the Department of Transport and Regional Services could also play a more conciliatory and facilitative role when there is a failure to reach agreement. Background investigations could be undertaken, where required, by the Bureau of Transport and Regional Economics to assist the parties and, in any event, it would provide better informed policy advice to the Minister on the veracity of the arguments of individual parties to the negotiation. This is not proposing a more interventionist role for the Government as commercial solutions to the problems that arise would remain the priority, but it is only reinforcing and formalising a role already provided for, to some extent, under the Part X regime, for the Minister's representative.

In many ways the roles assigned to the ACCC under Part X are ones which they cannot adequately fulfil. Asking a domestic competition regulator totally opposed to price setting on any level to investigate complaints under a regulatory regime that provides limited exemptions in that respect, even of a limited nature and a regime that governs an international industry of this kind requires reconsideration. If Part X remains unchanged, then the role for the ACCC as a reviewing body would remain but they could be used as a last resort.

Improvements if Part X is amended

There are also some anomalies in Part X as amended in 2000, namely that negotiations on "blue-water" rates in the inwards trades with the peak importer body is restricted to eligible Australian contracts but this is not the case as far as the investigation of "exceptional circumstances" by the ACCC is concerned.

Furthermore, carriers, parties to inward agreements are required to negotiate collectively agreed Australian land based charges with the Peak Importers Association of Australia (the IAA) but the Peak Exporter Body (APSA) requires carriers in the outwards trades to negotiate charges such as Terminal Handling Charges (THC's) at destination as well as at point of origin in Australia. It is recommended that if Part X is amended, that these anomalies be removed and that shipper bodies should only negotiate land based charges in Australia and leave charges at destination to be considered under the regulatory regimes of those other countries.

Furthermore, if Part X is to be amended then the role of the ACCC should be reconsidered as noted above (ie. with designated shipper bodies in specified circumstances) and a system of money penalties introduced for breaches of Part X that really do not warrant withdrawal of the exemption. For most cases, such a withdrawal would have an adverse impact on the shippers as well as shipowners. The detail of the new penalty regime could be fleshed out at a later stage if it was decided to proceed in this direction.

It is the view of SAL that the registration process could be expedited as far as variations to existing registered Agreements is concerned such as eliminating the need for a delay of 30 days after final registration before the exemption for the variation comes into effect. This delay period serves no discernable purpose for varied Agreements.

In addition, requirements for Discussion Agreements to reach a binding agreement as outlined above (ie. with designated shipper bodies in specified circumstances) could be included in Part X itself as a condition of the registration of a Conference Agreement as defined in Part X.

Strong and well resourced shipper bodies are an integral part of Part X and SAL would not object to any recommended measure to enhance that role from the point of view of Government financial support.

Conclusion

In conclusion, as the Productivity Commission pointed out in the last review in 1999 (Page xxxiv), "The regulatory approach embodied in Part X is tailored to these market characteristics. Part X essentially operates as an industry code, where the market operates relatively free of day-to-day, third-party intervention. Regulators take action in the event that Australian shippers are dissatisfied with the behaviour or performance of conferences. Evidence available to the Commission suggests that this approach has been successful, promoting commercial relationships and dispute resolution and facilitating good service and price outcomes for Australian exporters. Moreover, it has done so at comparatively low administrative cost and has not caused international jurisdictional conflicts."

It is the contention of this submission that developments over the last five years have not detracted from the effectiveness of the Part X type regulatory regime as recognised by the Productivity Commission in 1999.

An amended Part X as recommended in this submission will add to that effectiveness and efficiency thus further facilitating and not hindering the growth of Australia's international liner trade.

INTRODUCTION

1.1. The Liner Trade Practices Division of Shipping Australia represents thirty one shipping lines that are party to outward or inward Agreements registered under Part X of the Australian Trade Practices Act who would carry around 80% of Australia's international container trade. At Attachment A is a list of the parties to the Conferences/Discussion Agreements involved split by geographic trade areas. Based on 2003 figures, 80% would represent over $90 billion of Australia's international liner trade.

1.2. It is the view of those shipping operators and the contention of this submission that Part X has shown its flexibility and resilience in meeting the many challenges faced by the industry and liner shippers since 1966. It has produced not only highly competitive outcomes in terms of freight and service levels for Australia, but has also provided a transparent process in terms of the behaviour of parties to these Agreements that would not have been apparent under alternative regulatory regimes. There is a clear public benefit contained in Part X if one examines the objectives and benchmarks as specified in the Overview to this submission. Part X has been a relatively inexpensive but effective form of light-handed regulation in meeting those public interest objectives. This is not to say that the operation of Part X cannot be improved, as no regulatory system is perfect and regulatory systems of this nature need to be reviewed from time to time to ensure not only that they are compatible with the objectives of Government for its international shipping policy but also they are keeping pace with the rapidly changing international liner shipping scene. Nevertheless the fundamental issue remains that international liner shipping has a unique set of characteristics that require a specialised regulatory regime that, in turn, provides some limited exemption for price setting.

1.3. It is worth examining, briefly, the different types of shipping, especially the distinction between liner and bulk shipping; leaving aside for the time being specialised shipping such as passenger shipping and pure car carriers.

1.4. In respect to liner shipping, both exporters and importers of liner commodities/cargoes require a bus-like service which calls regularly at a range of scheduled ports in Australia and overseas carrying many different commodities on the one vessel at relatively stable rates of freight. Liner cargoes typically include primary commodities such as wine, wool, meat, malt, dairy, cotton, rice and horticultural products as well as those manufactured products and raw materials that require shipment in small parcels on a regular basis. Often very specialised equipment is required such as refrigerated high-cube containers, oversize containers, flat racks, uprated containers (ie high utilisation) and open top containers etc. to be positioned at nearby ports.

1.5. Many liner shippers also require just-in-time deliveries/collection in order to meet global supply chain requirements and reduce inventory stocks to the lowest practical level. Berthing windows are now available at Australian ports (container terminals) which greatly assists in this process. It is worth mentioning that container ship charter rates are at an all time high having soared 70% in the past year, taking rates well above the historic peaks of the 1990's eg. a 3,500 TEU panamax vessel is fetching in July US$34,500 per day compared to $33,500 three months earlier and a 1,700 TEU geared vessel had risen by $2,100 since April, 2004 to $23,000.[11]

[11] The Journal of Commerce Online, 27 July, 2004

1.6. This is a particularly important issue now with an increasing dependence on chartered vessels since 1998.

	1998	2004
TEU capacity of owned vessels as proportion of total capacity	90%	57%
TEU capacity of contracted vessels as proportion of total capacity	10%	43%

Figure 1
Source: Containerisation International, May 2004, pp 39-43

1.7. In Australia, bulk exports and imports in the year 2003 totalled 562.2 million tonnes and liner/non-bulk exports and imports totalled 35.8 million tonnes. The bulk trade was worth $A64.6 billion and the liner/non-bulk trade was worth A$115.3 billion.

1.8. Martin Stopford notes in his textbook[12] that the term "bulk" shipping is at times used to describe commodities such as crude oil, grain, iron ore and coal, whose homogeneous physical characteristics lend themselves to bulk handling, usually by the shipload from one port to another. Another definition of bulk cargo focuses on transport economics and uses the term to refer to any cargo that is transported in large quantities, usually a shipload to reduce transport costs. Under this definition, the category of bulk cargo expands to cargo such as refrigerated meat, chilled bananas, live animals and timber because they can be transported in shiploads. Since many of these cargoes do not stow easily in bulk carriers, special ships have to be built. Both definitions highlight an important aspect of bulk cargo, viz. the first emphasises the physical handling characteristics of the cargo itself while the second focuses on the tailored transport operation (eg. not covering a range of ports) made possible by the high volume of one commodity for one or at the most two destinations.

1.9. There is an almost pure application of neo-classical economies in the operation of bulk shipping, with the price being determined by supply of capacity and demand for its services at any particular time, with rates being fixed on a spot-market, which is basically on a per voyage basis, or on time charter, which as the title indicates is for a period of time. Such rates are set not only on the basis of the worldwide capacity available at any one time, but particularly where the bulk carriers required are positioned and the costs of bringing them to the port of loading. Charter rates for bulk vessels are at an all time high with time charter rates for capesize, panamax and handymax being almost three times the level they were a year ago. At the end of July, the rates (in US$/day) were $23,000 for a handymax, $30,000 for a panamax and $48,000 for a capesize[13].

1.10. The other type of shipping is categorised as General Cargo. Ships of this type are employed to carry mostly uncontainerised/breakbulk cargos such as steel, paper and timber products although many carry containers as well. Some operate in the smaller liner trades often on a charter basis. In terms of deadweight tonnage, there are still more of these vessels operating than containerships although the proportion is diminishing as more cargoes become containerised.

[12] Maritime Economies, 2nd Edition, by Martin Stopford, Routledge, 1997
[13] Barry Rogliano Salles Dry Bulk Newsletter, No 395, 26 July, 2004

1.11. Various Arrangements in the International Liner Trades Involving Australia

Arrangement	Essential Characteristics	Comment
1. Conference Agreements	**Normally covered by a Conference Constitution which acts as an umbrella for other types of Agreements, such as consortium/rationalisation, joint service Agreements, etc. which are separately registered under Part X. Minimum requirements for these Agreements are set out in Part X, but all seek to promote adequate, economic and efficient shipping services.**	Whilst there are still registered Conference Agreements (eg. AELA), many activities are now taken under the umbrella of the more modern form of "Conference" the "Discussion Agreement."
2. Discussion Agreements	These Agreements are normally more embracing in terms of the number of Lines in any particular geographical trade, but not all-embracing. Objective is to exchange collective supply/demand information and reach a non-binding consensus regarding rates, surcharges, rules and other terms and conditions of service in the trade. Members can withdraw on very short notice (typically 48 hours to 30 days notice). Minimum requirements as per Part X, e.g. negotiation of minimum service levels with APSA and the IAA are included.	Parties which adhere to the consensus but decide no longer to do so, notify other parties of their intention. Whilst these Agreements are simple in outline and intent, they have been successful in assisting parties in trying to bring some stability to the trade and supporting the high level of investment in the Australian trades. Capacity changes are discussed but there is not control over capacity.
3. Pooling/ Trade Share Agreements	Range from detailed rules for revenue pooling with certain cost deductions/cost pooling to trade share agreements that seek to constrain liftings within a specified range of individual Lines' market shares.	There are only two Trade Share Agreements registered at the present time in the European trade area.
4. Consortium Agreements	**Operational/technical Agreements covering the rationalisation of sailings, slot exchanges or slots purchased on a used or unused basis. Normally they are also under the umbrella of Conference or Discussion Agreements.**	Consortium Agreements can also include a rate setting ability under Part X and a number do so.
5. Joint Service Agreements	Similar to Consortium Agreements but only involve two parties.	

Figure 2

1.12. International liner ship operators have also been involved in world-wide alliances that tend to cover many trade lanes in the Asia East-West trades. In Australia, there have been times where carriers have moved from one consortium to another to reflect world-wide alliance membership.

1.13. International Shipping Partnership and Alliance Agreements

Covering the major liner shipping trade routes - Transatlantic, Transpacific Asia/Europe and Europe/Asia.

		Capacity in the Alliance		Alliance Capacity as % of Total Fleet	
Alliances	**Members**	**Ships**	**TEU**	**Ships**	**TEU**
Grand Alliance	Hapag-Lloyd	24	115,449	63.2	81.5
	MISC	4	16,622	12.50	33.40
	NYK Line	24	96,436	35.80	57.70
	OOCL	24	119,391	48.00	76.50
	P&O Nedlloyd	39	182,550	26.70	47.20
New World Alliance	APL	39	177,100	51.30	73.70
	Hyundai	18	99,158	58.10	81.40
	MOL	16	77,410	33.30	59.50
CKYH Alliance	Cosco	38	154,892	36.50	70.60
	"K"Line	31	135,205	53.40	77.30
	Hanjin	na	na	na	na
	Yang Ming Line	16	72,867	40.00	60.90
Independent Carriers Alliances	CMA/CGM Line	na	na	na	na
	CSAV	na	na	na	na
	Hanjin Shipping	na	na	na	na
	Montemar Marine	na	na	na	na
	Zim Container	na	na	na	na
Other Alliances	Hanjin Shipping	na	na	na	na
	United Arab Shipping	na	na	na	na

Figure 3

Sources: (1) Vessel Capacity - Container Shipping and Ports: An Overview. Theo E. Notteboom, Institute of Transport and Maritime Management, Antwerp.
(2) The Journal of Commerce ONLINE - www.joc.com/gta/steamship_all.shtml. Viewed 22/7/2004

Note: Ship numbers and TEU capacity relate to early 2003.

1.14. The top 20 container ship operators as at 25 February, 2004 are:

	Vessels Owned Capacity		Vessels Contracted Capacity		Total Capacity	
Carrier	**Total TEUs**	**Vessels**	**Total TEUs**	**Vessels**	**Total TEUS**	**Vessels**
Maersk Sealand	502,316	135	285,643	157	787,959	292
MSC	276,867	112	257,053	103	533,920	215
Evergreen	270,699	92	88,435	38	359,134	130
PONL	195,523	49	192,483	89	388,006	138
CMA/CGM	70,893	22	198,874	83	269,767	105
Hanjin	89,738	20	187,843	49	277,581	69
Cosco	228,995	113	21,698	16	250,693	129

	Vessels Owned Capacity		Vessels Contracted Capacity		Total Capacity	
Carrier	**Total TEUs**	**Vessels**	**Total TEUs**	**Vessels**	**Total TEUS**	**Vessels**
APL	135,316	34	131,834	45	267,150	79
MOL	95,178	27	111,513	37	206,691	64
NYK	162,991	43	54,876	22	217,867	65
CP Ships	106,452	39	82,866	40	189,318	79
K Line	89,963	24	98,423	38	188,386	62
OOCL	106,965	22	83,626	34	190,591	56
Zim	58,663	18	82,980	38	141,643	56
Hapag-Lloyd	117,537	25	50,565	18	168,102	43
Yang Ming	97,589	32	54,697	23	152,286	55
CSCL	69,568	52	118,820	38	188,388	90
Hyundai	55,239	16	76,485	18	131,724	34
CSAV	1,634	1	69,474	33	71,108	34
PIL	49,400	35	39,178	23	88,578	58
	2,781,526	**911**	**2,287,366**	**942**	**5,068,892**	**1,853**

Figure 4
Source: Containerisation International, May 2004, pp 39-43

Eighteen of these vessel operators are involved in the Australian trades.

1.15. In terms of capacity there has been a slight reduction in the top 10 since 1998. Capacity of top 10 container service operators as proportion of top 20 carriers:

Period	
1998	72%
2004	70%

Figure 5
Source: Containerisation International, May 2004, pp 39-43

1.16. World Container TEU Movements (including empties/transhipment) Forecasts, 2004

Trade (round voyage)	**Growth over 2003**	**TEUs 2004**
Intra - Asia	18.5%	31.9 million
Europe – Asia	10%	12.1 million
Transpacific	9.5%	15.3 million
Transatlantic	4%	5.4 million

Figure 6
Source: Dynamar BV Dyna Liners report 30/2004

1.17. This compares with around 4 million TEU movements in Australia in 2004. The containership fleet at the beginning of 2004 was:

1.18. Container Fleet as at 1 January, 2004

Size Range			**Cellular Ships**		**Non Cellular Ships**	
TEU		**TEU**	**Number**	*TEU*	**Number**	TEU
100	to	499	404	126,450	1,534	368,831
500	to	999	595	422,617	363	239,002
1,000	to	1,499	496	590,578	124	144,274

1,500	to	1,999	415	698,604	34	61,878
2,000	to	2,999	517	1,282,319		
3,000	to	3,999	260	885,099		
4,000	to	4,999	251	1,109,565		
5,000	to	6,999	212	1,240,795		
		>7000	35	273,438		
			3,185	**6,629,465**	**2,055**	**813,985**

Figure 7
Source: The Containership Market in 2003. Barry Rogliano Salles, Paris.
www.brs-paris.com/annual/container/container-a/container-a.html. Viewed 3/8/2004

Advantages of Conference/Discussion Agreements

1.19. The submission addresses the benefits of Discussion Agreements later on in the submission but they contribute to the benefits of Conference-type of arrangements which can be summarised as:

a) Exchange and discussion of market information which, in turn, leads to better forecasts of demand (and therefore eventually the required capacity); more stable prices then would occur without this exchange and it also assists future investment decisions.

b) Whilst rate levels tend to follow business cycles, the ability to discuss rates trends and collate information confidentially on revenue and costs (e. collated by an independent secretariat thus protecting the confidentiality of individual members) assists in determining a collectively agreed price rise if warranted. In addition, the main tariff can act as a benchmark and it should be noted that collectively agreed surcharges have remained relatively stable.

1.20. As the World Shipping Council stated in its paper on international liner shipping regulation in March 2001; “The benefits to caucus – better market information and marginal improvements in revenue results – are more than matched by benefits to the shipping public. Today’s existing practical and well-accepted regulatory system avoid the negative consequences of conflicting maritime regulations and chronic price and service instability, and encourages private investment in the greater capacity and new technologies needed to meet future market demand.”

1.21. The international liner shipping industry serving the Australian trades has been at the forefront of technological adaptation both on-board the vessels employed and on the land-side.

1.22. More recently introduced container vessels in the Australian trades have the latest technology on board with GPS navigation, computerised operations including electronic charts, bow thrusters and in some cases, stern thrusters which often reduce the number tugs required in port and Automated Identification Systems (as required by the International Ship and Port Security Code) and so on. All the container vessels visiting Australia complied with the Australian Maritime Security Act and its associated Regulations by the due date of 1 July, 2004.

1.23. In addition, shipping agents have adopted technological innovation in land-side operations including on-line booking systems, other documentation services, sailing schedules updated on the website, etc. The following is a list of innovations that have been implemented:

- Container tracking allows shippers to track shipments from the time they are placed in the hands of the carrier to the delivery at the final destination.

- Regional or trade-specific options are added, such as Custom's and cashier's clearance, fumigation status and other specifics.

- "Public" information is easily available. This might include sailing schedules, freight rate requests, online tariffs and various "quality" performance indicators.

- Sailing schedules are increasingly "interactive", with customers able to design an itinerary using specific port pairs.

- "Personalised" options are available. Customers, once registered, can design their own information menu. For example, some customers choose to receive e-mailed schedules on certain days of the week; others want e-mail advice that cargo has been loaded, or, conversely, delivered.

- Electronic Bills of Lading are widespread, with customers able to download and print from their desktops. Pre-printed stationery for each shipping line no longer needs to be kept by the customer.

- Shippers can now make on-line bookings and send "forwarding instructions" electronically.

- Shipping Lines are aware that different customers have differing aspirations and capabilities. Larger shippers might seek B2B connections through EDI. Smaller shippers might prefer to stay with facsimile or e-mail. Lines have balanced the various needs by ensuring that there are resources (technical and human) to provide whatever is required.

- In recent times, the development of "E-hubs" (whether in-house or 3rd party) has provided even greater levels of assistance through the ability to handle different types of files without machine-machine EDI.

- Shipping lines see that e-commerce capability provides a means to differentiate their services. The competition between lines is a constant spur for more innovation.

1.24. As we move forward, the lines will continue to adopt new technologies such as the use of electronic delivery orders and advances in technology generally will result in automated systems being installed to facilitate cargo movements eg. the introduction of the Customs Management Re-Engineering project (CMR) which will mandate electronic cargo reporting, Electronic Pre-Receival Advice (PRA) which has replaced the paper-based Export Receival Advice (ERA) and the electronic reporting of dangerous goods – especially High Consequence Dangerous Goods

1.25. These technological innovations as far as international liner shipping operators are concerned are facilitated by the certain and stable regime of regulation contained in Part X.

1.26. A brief history of conferences, part reviews of Part X and an outline of the regulatory regime in other countries is contained in Attachment B.

1.27. Mention is made in that Attachment of maritime subsidy measures adopted in other countries which can lead to market distortions:

Summary Table of Maritime Subsidy Measures

Type of Measures
Operating Subsidies, Construction Subsidies, Restructuring Aids, Financing Programs, Cargo Preference Requirements, Bilateral Trade Agreements, Scrap and Build Aids, Export Aids, Tax and Depreciation Benefits, Customs Duty Levies and Requirements, Government Ownership, Cabotage, Research & Development Aids, Maritime Insurance Aids, Other Aids.
Countries that employ two or more of these measures
Algeria, Argentina, Australia, Bahamas, Bangladesh, Belgium, Brazil, Burma, Canada, Chile, Colombia, Côte D'Ivoire, Cyprus, Denmark, Equador, Egypt, Finland, France, Germany, Greece, Honduras, Hungary, India, Indonesia, Israel, Italy, Japan, Kenya, Korea, Kuwait, Malta, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Singapore, South Africa, Spain, Sri Lanka, Switzerland, Taiwan, Thailand, Turkey, United Kingdom, United States, Uruguay, Venezuela.

Figure 8
Source: Prepared by the US MARAD in September 1993.

1.28. It can be concluded from Attachment B that the recurrent theme throughout the regime regulating international liner shipping in other countries which have pro-competitive laws, is a measure of limited or block exemption from the application of those laws.

1.29. A central theme in the Brazil review of Part X is that unilateral measures by Australia to eliminate or reduce the potential market power of international ocean carriers are unlikely to be of much effect because conference arrangements would then be made in another less restricted jurisdiction.

1.30. As the WSC pointed out in its 2001 paper on international liner shipping regulation that repeal of carriers' limited anti-trust immunity would be virtually certain to result in incompatible national maritime policies and conflicts of law. Such conflicts would result in inconsistent and incompatible enforcement of laws, the probable use of national blocking statues to prevent enforcement of anti-trust laws and severe regulatory and business instability and uncertainty.

1.31. As a consequence, the repeal of anti-trust immunity would not disrupt a reliable, efficient, smoothly operating international transportation system, but it could also transform international shipping from an effective facilitator of international trade to a discordant foreign relations dilemma. SAL concurs fully with that view!

CHANGES IN VOLUMES, FREIGHT RATES AND SURCHARGES, SERVICES AND COMPETITION SINCE 1999

2.1. Following are the fluctuations in freight rates in the major East-West trades.

Qtr/Year	Asia/US Eastbound	US/Asia Westbound	Europe/Asia Eastbound	Asia/Europe Westbound	US/Europe Eastbound	Europe/US Westbound
Q2 2003	100	100	100	100	100	100
Q3	116.19	101.16	104.33	106.50	98.59	103.14
Q4	110.19	94.08	98.95	105.86	90.26	104.93
Q1 2004	107.75	93.15	96.19	107.39	84.20	102.64

Figure 9
(Q2 2003 Base Period)
Source: Containerisation International, various issues.

2.2. The level of rates in these trade which covers dry cargo are generally higher than in a number of the Australian trades. However, indices for fluctuations in freight rates in the trade lanes covered by this submission are set out in Attachment C which also contains details of services offered and existing competition.

Summary of the North American Trades

Australia/US Discussion Agreement and United States/Australia Discussion Agreement

2.3. Members of either Agreement (but not necessarily both) are: Australia-New Zealand Direct Line, CMA CGM, Contship ContainerLines, Far East Shipping Company, Hamburg Sud, Marfret, Lykes Lines Limited LLC, P&O Nedlloyd Limited, Wallenius Wilhelmsen Lines, Maersk Sealand, Lauritzen Cool A/B, and Seatrade Group N.V.

2.4. **Southbound** – in the West Coast trade in 1999-2003 period rates fell by about 20% and recovered to about 87% of the 1999 level in 2004. In the East Coast trade, rates fell by about 26% through to 2003 with a small recovery to approximately 77% of 1999 levels in 2004.

2.5. The **Southbound** trade volume fell by approximately 35% in 2001 and recovered to about 4% above the 1999 level in 2003. The volume in 2004 is forecast to rise by about 8%.

2.6. Entry/Exit of service providers: Ocean Star Container Line left the **Southbound** Agreement and Maersk Sealand joined the Agreements. Maersk Sealand competes with the Agreement members in the East Coast USA to and from Australia trades with four dedicated vessels. In terms of other competitive influences, it is estimated that about 15 different carriers offer transhipment services to and from North America via Asia, Europe and South Africa.

2.7. Service levels for both the **Southbound** and **Northbound** trades have increased; in terms of the West Coast USA trade rising from one sailing per week in 1999 to two sailing per week in 2004 and for the East Coast trade the service has increased from one sailing each 9 days approximately to 1.5 fixed day sailings per week in 2004.

2.8. **Northbound** rates fell almost 9% in 2001 for dry cargo to West Coast USA and are now about 10% above 1999 levels. For refrigerated cargoes (reefer) there was a decline of 20% to 2002 with rates recovering to 89% of 1999 levels in 2004.

2.9. Dry cargo rates from Australia to the East Coast USA have fluctuated year by year rising to a high of 15% above 1999 levels in 2004. For reefer rates in the same trade, rates have steadily declined by nearly 27% to 2003 with a modest recovery of 3% in 2004.

2.10. Cargo volumes in the **Northbound** trade increased annually to 49% above 1999 in 2002 and in 2003 receded to about 23% higher than in 1999. The volume in 2004 is forecast to rise by about 5%.

Summary of the North/East Asia Trades

Southbound Asia-Australia Discussion Agreement and the Northbound Australia / North & East Asia Trade Facilitation Agreement

2.11. Members are: ANL Container Line Pty Limited, China Shipping Container Lines Co Ltd, COSCO Container Lines, Evergreen Merchant Marine (non participating member of AADA), Far Eastern Shipping Company. Hamburg Sud, Hanjin Shipping (AADA only), Hyundai Merchant Marine Co Ltd, Kawasaki Kisen Kaisha Ltd, Maersk Sealand, Mitsui OSK Lines Ltd, MSC Mediterranean Shipping Co SA, Nippon Yusen Kabushiki Kaisha, Orient Overseas Container Line, P&O Swire Containers and Zim Israel Navigation Company Ltd.

2.12. **Southbound** rates to East Coast of Australia:

- Japan Southbound rates are 8% lower today than they were 5 years ago in 1999
- Peoples Republic of China Southbound rates are 17% higher than in 1999 although this is after rates dropped by 17% in 2002.

2.13. Comparing volumes in 2004 with those of 1999 the following variations have occurred:

- Japan and Korea volumes fell 25%
- East Asia volumes improved by 228%
- North/East Asia Trades increased by 168%

Entry/exit of service providers both **Southbound** and **Northbound**:

Entered	**Date**
APL	May 2004
Hamburg Sud	July 2002
Hapag Lloyd	May 2004
Hyundai Merchant Marine	December 2000
Lykes Lines	July 2004
PIL	May 2004

Exited	***Date***
Blue Star Line	August 2000
Cho Yang Line	November 2000
Wallenius Wilhelmsen	November 2003
Yang Ming Line	October 2002

Figure 10

2.14. Competition, East Coast Australia (Southbound), apart from transhipment operators, the following vessels providers offer direct competition to the AADA:

- APL, Evergreen (non participating member), Hapag Lloyd, Lykes Lines and PIL

Between them they deploy 9 ships representing 19% of the total number of ships on the route.

2.15. Service to East Coast of Australia

	1999	**2003**	**2004**
Vessels	60	30	48
Voyages	494	312	494
Capacity TEU	730,000*	640,000	900,000

Table 11

*Includes 52,000 TEU pa for WWL whose allocation for trade cargo was limited.

2.16. **Northbound** rates from East Coast Australia

- Japan general rates are 37% lower and reefer rates are 52% higher today than they were 5 years ago in 1999
- Shanghai rates are 20% lower and reefer rates are 26% higher today than in 1999

2.17. Comparing volumes in 2004 with those of 1999 the following variations have occurred:

- Japan and Korea volumes increased by 57%
- East Asia volumes are square after dropping down 14% in 2003
- North/East Asia Trades improved by 24%

2.18. Competition, East Coast Australia (Northbound), apart from transhipment operators, the following vessels providers offer direct competition to the TFA:

APL, Hanjin, Evergreen, Hapag Lloyd, Lykes Lines and PIL. Between them they deploy 10 ships representing 21% of the total number of ships on the route.

2.19. Service volumes from East Coast of Australia

	1999	2003	2004
Vessels	60	30	48
Voyages	494	312	494
Capacity TEU	660,000*	545,600	810,000

*Includes 52,000 TEU pa for WWL whose allocation for trade cargo is limited.
Figure 12

Summary of the Australia/South East Asia Trades

Northbound/Southbound Australia/South East Asia Trade Facilitation Agreement (Southbound Agreement also covers South Asia)

2.20. Members are: ANL Container Line Pty Limited, APL Lines (Australia), Hyundai Merchant Marine Co Ltd, Kawasaki Kisen Kaisha Ltd, Maersk Sealand, Malaysia International Shipping Corporation Berhad, Mitsui OSK Lines Ltd, Nippon Yusen Kabushiki Kaisha, Orient Overseas Container Line Ltd (Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd), P&O Nedlloyd BV, P&O Nedlloyd Limited, Pacific International Lines (Pte) Ltd, PT Djakarta Lloyd, RCL Feeder Private Ltd, Zim Israel Navigation Co Ltd and Hanjin Shipping Co Ltd (Southbound only).

2.21. **Northbound**, by 2004 the Northbound Reefer rates were 79% of the 1999 levels, and the general cargo rates were 65% of 1999 levels.

2.22. **Southbound,** by 2004 the Southbound general cargo rates were 158% of the 1999 levels.

2.23. Exports, in 1999 were approximately 222,400 TEU's which remained steady until 2002 when volumes increased to 281,892 TEU's. In 2003 volumes dropped to 215,400 TEU's and it is estimated that around 232,600 TEU's will be exported in 2004.

2.24. Imports, in 1999 the volumes were approximately 239,700 TEU's, and since then have trended upwards and in 2004 are expected to be approximately 342,150 TEU's, an increase of 43% over the period.

2.25. In 1999 and 2004 the TFG service northbound and the All Lines' Agreement southbound consisted of the same five strings. In 1999 the TFG faced competition from four other services northbound comprising of the AELA northbound Westabout services. The All Lines had no southbound competition in 1999 from other vessel operators.

2.26. In 2004 the TFG has competition from five services northbound, (AELA Westabout, MSC European, ASA, Swire and Wilhelmsen), and three services southbound (MSC East/North Asia, ASA and Swire).

Summary of the Trans-Tasman Trades

Eastbound Australia/New Zealand Discussion Agreement and Westbound New Zealand/Australia Discussion Agreement

2.27. Members are: **Eastbound**; Australia-New Zealand Direct Line, Contship Containerlines, Far Eastern Shipping Company, Hamburg Sud, Malaysia International Shipping Corporation Berhad, MSC Mediterranean Shipping Co SA, P&O Nedlloyd Limited and Pacific International Lines (Pte) Ltd. **Westbound**; in addition to the above, Wallenius

Wilhelmsen Lines, New Guinea Australia Line Pty Ltd, Australia-West Pacific Line (PG) Pty Ltd, Papua New Guinea Shipping Corporation Pty Limited.

2.28. **Eastbound**, by June 2004 the average reefer rates were 84% of the level applying in 1999, and general cargo rates were 70% of the 1999 levels.

2.29. **Westbound,** by 2004 the average reefer rates were 86% of the 1999 level and the general cargo rates were 79% of the 1999 level.

2.30. Exports, in 1999 the total trade to New Zealand from Australia was around 117,037 TEU's and generally trended upwards to 2004 when it is anticipated that the total trade from Australia will be around 147,600 TEU's, an increase on 1999 of 26%.

2.31. Imports, in 1999 the total trade from New Zealand to Australia was around 90,100 TEU's and has trended upwards to 2004 when it is anticipated that approximately 138,223 TEU's will move, an increase of 53%.

2.32. In 1999 the Forum's **Eastbound** service consisted of twelve strings, and the **Westbound** services thirteen strings. In both of these services, two were dedicated services to the trade and the remainder are cross-over services. In 1999 the Forum services had competition from PIL/MISC and MOL.

2.33. In 2004 the Forum's **Eastbound** service consists of eight strings, and the **Westbound** services consists of nine strings. In both these services, two are dedicated to the trade with the remainder are cross-over services. In 2004 the Forum services faces competition from ANL, Maersk and Chief Container Services.

2.34. The reduction of the number of strings in 2004 compared to 1999 is due to the rationalisation of the European and North American services during the intervening period.

Summary of the Europe Trades

Southbound Europe to Australia and New Zealand Conference Members' Agreement and the Northbound Australia to Europe Liner Association

2.35. Members are: Associated Container Transportation (Australia) Limited, CMA CGM, Consortium Hispania Lines, Compagnie Maritime Marfret, Contship ContainerLines, Hapag-Lloyd Container Line GmbH, Hamburg Sud, P&O Nedlloyd Limited, P&O Nedlloyd BV and Shipping Corporation of New Zealand Limited.

2.36. **Northbound**, by 2004 reefer rates were 75% of the 1999 rate levels, and the general cargo rates were 147% on the 1999 rate levels.

2.37. **Southbound**, by 2004 the general cargo rates were 108% of the 1999 rate levels.

2.38. Total trade volume for **Northbound** in 1999 was approximately 82,500 TEU peaking in 2002 to 101,000 TEU's. It is anticipated that in 2004 the volume will be approximately 93,000 TEU's.

2.39. Total trade volume for **Southbound** in 1999 was approximately 213,300 TEU's and in 2004 it is anticipated that 296,700 TEU's will move. An increase of 39%.

2.40. In 1999 the AELA service consisted of four operative strings. Due to the i~troduction of new services and vessels in 2002 the AELA service now consists of two strings.

2.41. In both 1999 and 2004 AELA faced competition from seven other strings, both northbound and southbound. In both years, MSC provided a direct service between Europe and Australia and the other six competitors transhipped northbound and southbound cargo - five at Singapore and one at Yokohama.

Summary of the Middle East Gulf/Indian Sub-Continent Trades

Australia Middle East Gulf and West India/Pakistan/Sri Lanka Conference and West India/ Pakistan/Sri Lanka Conference

2.42. Members are: Nippon Yusen Kabushiki Kaisha and P&O Nedlloyd Limited/P&O Nedlloyd BV (acting as one party).

2.43. **Northbound**, in 2004 the reefer rates to Jebel Ali (AMEG) were 80% of the 1999 rate levels, and to Colombo (AWIPSL) 156% of the 1999 rate levels. In 2004, the general cargo rates to Jebal Ali were 130% of the 1999 rate levels, and to Colombo were 122% of the 1999 rate levels.

2.44. **Southbound**, included in the All Lines' Southbound estimates for the South East Asia/Australia Trade where by June 2004, the average general cargo rate was 158% of the 1999 level.

2.45. Exports, in 1999 the total trade was around 47,000 TEUs. Since then the volumes peaked in 2002 at around 52,900 TEUs. In 2004 around 51,800 TEUs is forecasted.

2.46. Imports, in 1999 the total trade was around 22,300 TEUs. In 2004 it is forecasted to reach around 36,300 TEUs, an increase of 63%.

2.47. In 1999 the AMEG/AWIPSL Member Lines employed four vessels that provided a direct service to these two regions. At that time, the competition consisted of nine other services that comprised the five TFG strings, (North and Southbound), and four AELA Westbound strings (Northbound).

2.48. In 2004 there is no direct service provided to these two regions. Instead cargo is loaded in Australia on to the AAX Consortium vessels and transferred at Singapore to the GKX/SAX Consortium vessels that service the trade between the Far East/South East Asia and Middle East Gulf/Indian sub-Continent. Competition consists of nine other services comprising of five TFG strings, (North and Southbound), the AELA Westabout service (Northbound), MSC's European service (Northbound), MSC's East/North Asia service (Southbound) and Swire Group (North and Southbound).

The Most Recent Investigation Under Part X by the ACCC

2.49. SAL has separately sent the Productivity Commission a copy of its response to the report by the Australian Competition Commission (ACCC) on its inquiry into the activities of the Southbound Conference; the Asia-Australia Discussion Agreement (AADA) earlier this year. The Commission was investigating complaints from some importers in Australia that the parties to the Agreement had announced a number of significant rate increases over the previous eighteen months and there was insufficient notice given and also that space or the berth was very tight.

2.50. Such investigation of the AADA provides a good example of the inappropriateness of having the ACCC mandated to undertake such matters. Indeed, it is interesting to note the following extract taken from the AADA's response to the ACCC's Position Paper relative to such investigation:

"*The circumstances that originally gave rise to the Commission initiating its investigation appear tenuous. To justify its decision on the strength of having received a limited number of complaints and without providing any explanation as to the measures it had advanced to avoid an investigation, such as ensuring all avenues available under Part X had firstly been exhausted, including the convening of formal negotiations between the IAA and AADA, is a particular area of concern. The absence of such background invites questions as to whether the ACCC came to instigate its investigation with an open mind or simply used any complaints as a ready excuse to pursue its well publicised quest of reigning in all perceived forms of cartel behaviour and ultimately, in the context of liner shipping, the repeal of Part X of the TPA.*

The AADA would be interested to learn how the Commission reconciled itself with the fact that around 80% of freight on imports from North & East Asia involve contracts entered into at place of origin and that there were NO formal complaints received from any shipper or shipper organisation in China, Hong Kong, Taiwan, Japan or Korea of unreasonable behaviour by the AADA members during nor since the reference period. Furthermore, it is considered significant only one of the four designated secondary bodies for the inward trades that are registered in Australia under the provisions of Part X saw a need to respond to the ACCC's issues paper. To seemingly dismiss such circumstances and form a preliminary view that there are grounds to disallow the AADA powers to collectively discuss freight rates and surcharges on the strength of complaints from an insignificant sample of the market appears extreme."

2.51. Leaving aside the motives behind the ACCC's decision to instigate such an investigation, the experience highlighted the Commission's lack of any deep understanding of the unique characteristics of the liner shipping industry, as evidenced by a number of fundamental flaws that were contained in its Position Paper including:

- Whilst a heavy reliance was placed upon the application of the "counter factual" to demonstrate that the public interest would have been better served without the AADA, the ACCC critically failed to recognise the potential influence of ANZESC whose members, numbering almost half of the AADA, would, in all probability, have conducted themselves in a manner similar to that of the AADA.

- The ACCC failed to properly recognise the extent of transhipment operations and in so doing over stated the AADA's trade share.

- There was insufficient appreciation that the extent of the volume growth from China had not been foreseen and that the space shortfall could not be readily solved by the immediate positioning of additional or larger tonnage. In reality, there was a global dearth of suitable tonnage during the reference period, which affected lines ability to introduce additional capacity.

- Scant regard was given to the need for lines to achieve a return on investment and the necessity for revenues to be increased after years of decline in order to enable lines to afford the positioning of additional vessels; the cost of which, in light of the aforementioned market conditions, were at record highs.

2.52. It is instructive to highlight that during the period of the ACCC investigation the natural dynamics of international liner shipping came to pass with an influx of additional services being introduced; proving there had been no conspiracy, as the ACCC wished to suggest, that the members of the AADA collectively decided to withhold the provision of additional capacity as a ploy to increase rates of freight.

2.53. Although the ACCC's investigation of AADA was premised on the misconception that Discussion Agreements/Conferences in the Australian trade can and do behave in an anti-competitive fashion, practical reality demonstrated that such was not the case. Carrier organisations do not, and cannot, eliminate the natural forces of market supply and demand. Theoretical beliefs notwithstanding, the liner shipping industry is, and will continue to be, a highly competitive industry – in the Australian trades and across the globe. This point is supported by the fact that the competitiveness of services provided on the NE Asia trade is extremely robust with importers and exporters currently enjoying an unprecedented variety and standard of service.

2.54. The absence of barriers on entry and exit certainly encouraged such developments and in the final event even the ACCC conceded that it could not prove a case for the partial deregistration of the AADA, as it had advocated in its preliminary Position Paper.

2.55. Since Part X was significantly modified in 1989, there have been only four major and formal ACCC investigations under Part X involving the establishment of THCs in the US by the Australia-United States ContainerLine Association, investigation of any anti-competitive aspects of the Discussion Agreement in the Australia-United States trade, thirdly, collectively setting THCs in the inwards trades in Australia and finally the recent investigation into the Asia-Australia Discussion Agreement noted above.

2.56. The investigation into THCs in the US was resolved to the mutual satisfaction of all parties, the meat exporters did not support the ACCC investigation into the Discussion Agreement in the US trade and the Commission concluded that there was legal doubt whether or not Lines had the ability to collectively set import THCs in Australia under Section 10.22 of Part X. This was resolved with the amendments in 2000 to Part X to remove any doubt.

2.57. It is instructive to consider the points made by the parties to the Australia-United States Discussion Agreement during the ACCC investigation. The contention was that the major benefit of the AUSDA was that it provided for a constructive dialogue between the parties to avoid major trade disruption and yet retained competition in the trade because there was no requirement for mandatory rate action according to a majority vote, and no evidence was submitted by its opponents that there had been a reduction of competition since its

formation. Importantly, the constructive dialogue facilitated by Agreements of the type such as the AUSDA can assist in reducing the likelihood of such destructive rate competition which occurred in this trade in 1994; thereby meeting the Part X test of stability and adequacy of service, and it also provided an excellent forum to co-operatively seek to resolve trading problems, thereby directly assisting exporters. It was also pointed out that there was significant competition by Lines not parties to the AUSDA, including that provided by transhipment operators.

Surcharges

Description of Commonly Applied Surcharges

Surcharge	Comment
Bunker Adjustment Factor or Emergency Bunker Surcharge (BAF/EBS) or Bunker Surcharge (BS) and Currency Adjustment Factor (CAF)	Bunker prices are compared to a base price (which is periodically reviewed) and if the variation is greater than an agreed amount over a period of say five weeks then a BAF, EBS or BS is triggered or a variation is made to an existing charge. BAF's tend to apply to collectively agreed tariff rates whilst the EBS and BS are normally applied to market or non-tariff rates. The formula is negotiated on a trade by trade basis with the Australian Peak Shippers Association or with a secondary shipper body designated to hold negotiations. Currency Adjustment Factors are no longer generally applied since Northbound tariffs were converted from Australian to US dollars in 2001. The Australia to New Zealand trade still has a CAF because the tariff rates applied are in Australian dollars. Should the members of that Discussion Agreement convert their tariff rates to US dollars in the future then the CAF will be withdrawn.
Port Service Charges (PSC's)	PSC's generally cover statutory port charges for the account of cargo and include wharfage on full containers. There are additional terms used in Brisbane (harbour dues) and Fremantle (cargo berth hire) which are added to wharfage on full containers. Ship operators collect these charges on behalf of the various Port Corporations. Shipping lines in Australia act as collection agents for the port authorities without any recompense for performing that task. Wharfage on empty containers eg. which applies in Brisbane, is not included in PSC's.
Terminal Handling Charges (THC's)	THC's were introduced in the latter half of the 1980's and cover all or a major proportion of stevedoring costs at points of origin in Australia (OTHC's) or destination (DTHC's) in the Northbound trades and the reverse applies in the Southbound trades consistent with the worldwide practice. 80% of stevedoring costs are applied in the Northbound trade at both origin and destination and 100% of the stevedoring costs are applied as THC's in the Southbound trades. The reason is that at time of introduction the Northbound trade THC's were negotiated with APSA and overseas they decided to introduce 100% THC in the Southbound trades well before the Importers Association of Australia came into existence and before the amendments to Part X which came into effect in March, 2001 and covered, in a limited way, the regulation of the inwards trades. An explanation for these charges is included in the main submission.
Demurrage/Detention	These two terms can be used interchangeably but in Australia a distinction is usually drawn between demurrage which is charged by the stevedores and levied on the shipper for storage at the container terminal if containers are not collected after three calendar days from the time they are available for collection. Therefore, this is not normally a ship operator or shipping agent charge. However, if an importer does not return the empty container ten calendar days after collection, a fee is charged by the ship operator/agent. This is normally referred to as a detention charge in Australia.

	The actual amount is set by individual lines and is not collectively agreed because SAL has been advised that it is unlikely that the exemptions available under Part X extend to detention (ie. since the amendments with came into force in March, 2001 which limited the exemptions to/from inland terminals declared by the Minister that are not the doors of shippers premises or packing/unpacking facilities).

Surcharge	Comment
Equipment Handover Charges (EHC)/Lift-on/Lift-off (LO-LO) charges	EHC and LO-LO are similarly set individually by lines and are not collectively agreed under Part X. The actual charge thus varies between lines and covers the cost of lifting the containers on/off trucks at intermodal terminals and in some cases also covers the administrative costs of handing over or receiving back the container.
Documentation Fee	This is another charge set by individual carriers (and is not agreed collectively under Part X) to primarily reimburse agents for expenses incurred in preparing and providing Bills of Lading for shippers. Due to mandatory security regulations introduced by the US and Canadian Governments since December 2002, a separate levy is individually charged by lines (the North American Customs 24 hour manifest charge) to cover the extra substantial administration necessary to comply with the stringent reporting requirements of the Canadian/US Government 24 hours before a container may be loaded for North America or in transit via North America for other final destinations. This has resulted in lines having to cut-off the receival of cargo 4 days before vessels arrival at the loading port in Australia instead of 2 days previously.
Other Charges	The only other charge normally agreed collectively is a Peak Season Surcharge in some Southbound trades from Asia. This temporary charge covers the high season when vessels are fully utilised or at least space on the berth is very tight. There are a range of case and cargo specific charges covering special equipment costs, special liners for containers of wet salted hides, thermal blankets, cash-on-delivery of Bills of Lading, over-dimensional cargo, shipper owned containers, booking cancellation fees, food quality containers and so on. The application of these charges varies from Line to Line and/or trade to trade depending on the costs incurred and cargoes carried.

Figure 13

Note: There are some differences in the number, type and description of these surcharges and the way these are calculated between trades and this list is not exhaustive but does include the vast majority of surcharges applied.

2.58. Of note is that not all charges levied by the parties to these agreements are collectively agreed under Part X. The most common surcharges which are collectively agreed in a number of trades lanes and are for the account of the shipowners and are passed on as third party costs (ie. excluding wharfage on full containers which is for account of cargo and collected on behalf of the Port Corporations) are Terminal Handling Charges (THC); Bunker Adjustment Factors (BAF); Emergency Bunker Surcharges (EBS) or Bunker Surcharges (BS); and Peak Season Surcharges (Southbound). There is only one case of the Currency Adjustment Factor being applied and that is in the Australia/New Zealand trade which still maintains the Australian dollar in its tariff currency. Other trades converted to US dollars three years ago.

2.59. Surcharges applied individually but covering a number if trades would include demurrage detention charges, Equipment Handover Charges (EHC) or Lift on/Lift off (LO-LO) charges and documentation fees. As mentioned in the above table these are a range of specific surcharges covering specific requirements such as replacing documents, special equipment costs and so on.

Terminal Handling Charges (THC)

2.60. This is a contentious charge as far as shippers are concerned but it is a worldwide practice in this industry and it has been an emotive issue. In effect, the benefits of THC's are transparency but they are not anti-competitive effectively being an invoice itemisation issue. The freight invoice lists these specific charges, but the through freight rate, i.e. terminal to terminal, has to be competitive in the market and this, in effect, squeezes the margin, or bluewater freight rate, where THC's are applied compared to the situation where they are not shown in a transparent fashion. In other words, the overall freight rate is competitively set in the marketplace irrespective of whether THC's are shown in a transparent fashion or not.

2.61. As mentioned above, THC's are prevalent in most of our trading partner countries and lines believe that the public and interested parties should be aware of these charges on a port by port basis and not have them obscured and hidden in the overall freight rate. Both the National Farmers' Federation and the Australian Minerals Council, in the past, have supported the transparency aspects of these types of charges.

2.62. In the last review by the Productivity Commission (PC), it was noted that it was common practice until the mid-1980's to subsume THC's into the basic freight rate. However, declining freight revenue and increased stevedoring cost led carriers to separate out "third party" charges, notably THC's and Port Service Charges (PSC's).

2.63. SAL believes that there are significant benefits in separately identifying and making transparent these charges; primarily because of the pressures that can be exerted on poorly preforming enterprises and the benefit could be lost if Conferences and Discussion Agreements were unable to collectively set THC's.

2.64. In the last review, the Commission concluded that "it is difficult to understand that the itemisation of cost components in itself can lead to overall rate increases. If shippers prefer to be quoted a single price for a complete service, this properly should be the subject of negotiation between themselves and the carriers rather than required under Part X. The Commission does not believe it desirable for the outcome to be determined by regulation."

2.65. SAL supports this conclusion as it leads to negotiation of service contracts that normally included an exchange of obligations and incorporating agreements on a range or pricing options.

2.66. A meeting was held with the IAA to discuss this issue and the price itemisation issue was explained as were the benefits of transparency. Importantly, THC's do not impact on competition levels in the industry but there is value in supporting itemisation of invoices to enhance transparency.

ECONOMIC THEORIES AS THEY RELATE TO INTERNATIONAL LINER SHIPPING

3.1. International liner shipping operates in a complex set of markets, the supply and demand characteristics of which make the naïve application of simplified economic theories inappropriate and seriously misleading. To properly analyse a world of high fixed costs, inelastic demand for services, chronic trade imbalances, inelastic and lumpy supply, free entry and Government subsidisation, it is essential that one take account of how those important factors influence commercial behaviour. Intellectual shortcuts – such as making uninvestigated assumptions and using highly simplified versions of economic theory – are more productive of error than insight.

3.2. The international liner shipping industry does not, and almost certainly never will remotely resemble the neo-classical ideal of a perfectly competitive industry. As Mary Brooks points out in her book[17] "Sea Change in Liner Shipping", "The performance of markets is based on both the conduct of buyers and sellers in the particular market and the structure of the market." Various theories of Industrial Organisation evolved. Devanney and others sought to explain liner conference behaviour using "open cartel" models; the central notion being that conferences initially attempt to act as a textbook collusive oligopoly, restricting capacity to below optimum levels and setting rates well above average costs. Clearly the evidence points to the opposite as far as the operation of Conferences and Discussion Agreements are concerned. Rates have fluctuated, at times reaching extremely low levels, they have never been set well above average costs, there is no evidence that parties to such agreements have ever been able to restrict capacity let alone to below optimum levels and as set out early in this submission, it is clear that they do not display in any way the behaviour of collusive oligopolies.

3.3. There has been much debate on the level of contestability of this industry, with again many differing opinions and questioning of some of the assumptions, such that "all players in the industry have similar cost bases". It is also noted that the EU Committee in its latest Discussion Paper, dismissed the theory of contestability, somewhat hurriedly, nevertheless, observation of the market can only lead one to conclude that, whilst one can argue over the level, it is certainly a market which is contestable. In the Australian trades, for example there have been a significant number of major entries and exits over the last twenty years of so and there has also been the increased prominence and acceptability of transhipment operations. Undoubtedly, individual sub-markets, or collections of sub-markets, are highly contestable. The fact that large-scale entry into a trade is implausible is of little practical importance. The liner shipping market provides an example of "workable contestability" and imposes a level of discipline on conference behaviour.

3.4. The previous investigation into the Australian-South East Asian trade by the ACCC, in 2000, found that there was a history of entry and exit in the South East Asian trade and that "liner shipping characterised by frequent opportunistic entry as a result to low barriers to entry and exit".

3.5. If entry into individual sub-markets is free, the theory of the core, derived from game theory, could be of importance in determining bounds to the set of feasible price strategies, or sustainable prices in such a market. The economists Sjostrom and Pirrong

[17] Mary R Brooks, "Sea Change in Liner Shipping, Regulation and Managerial Decision Making in a Global Industry", Centre for International Business Studies, Dalhousie University, Halifax, Nova Scotia, Canada. Pergamon 2000.

have sought to explain the application of this theory to the international liner shipping industry. Simply stated, the "core" is the set of equilibrium outcomes in game theory; when competitive equilibrium does not exist it is because the “core” of the market may be empty. That is, equilibrium is not possible and there never will be stability (Brooks 2000). These economists have argued that under free market conditions the liner shipping industry will not achieve equilibrium and therefore stability must be imposed, for example, in terms of the industry organisational structures that have evolved over time. Again, the assumptions underlying the theory have been questioned, and Sjostrom acknowledged that a number of his conclusions were very tentative and more work in this area was required. The probability of an empty core is more likely, for example, the more homogeneous are the firms in the industry (e.g. having similar costs). Whilst that is not probable at the conference level, such a condition could be satisfied in certain consortia or other vessel sharing arrangements. However, further consideration of this theory could assist in the development of a more plausible economic model for the future. It could also seek to explain why there are a number of unique aspects of this industry which require special regulatory attention, and the fear that the full application of national competition policies to international shipping will lead to destructive competition.

3.6. As JW Markham[18] wrote over fifty years ago, “An industry may be judged to be workably competitive when, after the structural characteristics of its market and the dynamic forces that shaped them have been examined, there is no clearly indicated change that can be effected through public policy measures that would result in greater social gains than social losses.”

3.7. The EU Commission appointed an international team of expert maritime economists associated with Erasmus University in Rotterdam lead by Professor H. E. Haralambides and the team also included Dr Sjostrom. The group was requested to summarise the submissions received and to analysis the economic issues related to conference activities and ocean freight rates and the groups original statistical analysis of freight rate stability concluded that liner shipping conferences:

- Are not “price setting cartels”
- Play a complex role against a background of difficult competitive conditions inherent in liner shipping
- Function as a platform to discuss prices and related cost levels
- Have virtually no ability to collectively raise rates, may even foster more competitive pricing in the market as a whole, and reduce freight rate volatility

3.8. The team recommended that the appropriate way forward was to ensure a regulatory policy for liner shipping that maintained a limited anti-trust exemption while at the same time ensuring that conditions were in place to safe guard the longevity, sustainability and success of liner shipping operational alliances.

[18] J W Markham, “An Alternative Approach to the Concept of Workable Competition”, American Economic Review, June 1950.

3.9. The attention of the Productivity Commission is drawn to this report given the authors standing as world leading economists and their in depth review of the theoretical issues underlying the case for an anti-trust exemption for liner shipping.[19]

3.10. Shipping contributes around 50 per cent of the transport cost associated with imports/exports, which in turn ranges from 2 per cent to 25 per cent of the value of the cargo. The remainder of the transport cost is incurred once the cargo is landed, in costs associated with intermodal operations and land transport.

Typical Ocean Freight Levels US$

	Unit	Shelf Price $	Freight $	% of value
250cc motor cycle	1 unit	6,000.00	85.00	1.4
Television	1 unit	500.00	10.00	2.0
Cassette Recorder	1 unit	160.00	1.50	0.9
Vacuum Cleaner	1 unit	75.00	1.00	1.3
Whiskey	1 bottle	35.00	0.16	0.5
Coffee	1 kg	12.00	0.14	1.2
Biscuits	Tin	3.00	0.05	1.7
Cheese	200 g	2.00	0.03	1.5
Beer	Can	1.00	0.01	1.0

Figure 14
Source: European Liner Affairs Association

3.11. Lines operate regular, reliable and frequent services and incur high fixed costs. Once the large and expensive networks are set up, the pressure is on to fill them with freight. The simple observation that unused capacity cannot be stored and used later further increases the pressure to go for volume. In order to secure cargo, shipping lines have negotiated long-term contracts with shippers, however the risk balance in those contracts resides at the carrier side. In an environment of over capacity, high fixed costs and product perishability, lines will chase short run contribution filling containers at a marginal cost only approach, often leading to direct operational losses on the trades considered.

3.12. Rate erosion would not be that bad if changes in freight prices had a major impact on demand. Unfortunately, for most shipments freight revenue only accounts for a very small portion of the shipment's total value, but as carriers cannot influence the size of the final market, they will try to increase their short run market share by reducing prices. As such, shipping lines may reduce freight rates without substantially affecting the underlying demand for container freight.

3.13. Rather inelastic demand curves are the core problem for liner profitability and are at the heart of liner strategy. Lines have come to accept that they have to take whatever price is offered in the market. This acceptance has, in turn, led to intense concentration on costs.[20]

[19] "Contract of Services for the Assistance in Processing Public Submissions" to be received in response to the "Consultation Paper" on the review of Council regulation 4056/86, final report prepared by economists from the Erasmus Universiteit, Rotterdam, November 12, 2003.
[20] Theo Notteboom, Review of Network Economics Vol 3, Issue 2, June 2004.

RESPONSE TO QUESTIONS RAISED IN THE PRODUCTIVITY COMMISSION'S ISSUES PAPER TO THIS REVIEW THAT HAVE NOT OTHERWISE BEEN ADDRESSED IN THIS SUBMISSION

4.1. A number of the issues in the paper have already been addressed but the Productivity Commission raises the question "given the emerging international trend to limit any anti-trust exemptions for Conferences and Consortia, what are the reasons for retaining Part X in Australia?"

4.2. This is a fundamental question but SAL would challenge the basis for the question which is that there is an emerging international trend to limit anti-trust exemptions. Part X only provides limited exemptions in the first place which it is considered are necessary to permit the activities and services valued by shippers and information sharing amongst carriers and shippers is critical to maintaining pricing stability and reliability in the supply of vessels and equipment. As outlined elsewhere in this submission, many countries appear satisfied with the current state of the anti-trust exemptions and even in Europe, there has been no decision to limit such exemptions. Any efforts to maintain international comity require that the PC withhold a decision until its clear what is going to be the outcome in the EU and US of any proposed changes; and stressing that ACCC has not made an affirmative case with supporting evidence that the present regulations are harmful to the Australian shipping public, while the carriers have made a case that the present system works well and provides benefits to the Australian shipping public. That being the case – and absent any showing of harm – the prudent course is for the PC is to leave the current regulations in place and revisit the question (from the perspective of international comity in liner regulations) only after the likely future situation in the EU trades and US trades has been clarified.

Possible Alternatives to Part X

4.3. The Issues Paper also raises questions of possible alternatives to Part X such as application of the general authorisation process established under Part VII of the TPA, amending the TPA to create a regime for granting block authorisations, replacing Part X with a non-legislative mechanism such as an Industry Code or replacing Part X with a notification process for the liner shipping industry.

4.4. The application of Part VII of the TPA to international liner shipping, the granting of a block exemption or a notification process were extensively explored in the last review and the 1993 Review Panel noted that the Part VII authorisation process would be hostile to price fixing, which is per se illegal under Section s45A of Part IV of the TPA. The comments made in the 1993 report on National Competition Policy in relation to price fixing confirmed this. The application of Part VII procedures would be favoured by those opposed to the Conference system and the application of Part VII was not recommended in that review nor in the 1999 review. That latter review considered the alternative approaches outlined in the Issues Paper in a comprehensive way. In relation to authorisation, the Commission considered:

- Whether the same matters covered by Part X could be covered in an authorisation
- Whether the ACCC is likely to authorise core elements of Conference Agreements, particularly the price fixing provisions;

- Whether it would increase regulatory uncertainty arising from the ACCC's ability to revoke authorisations, and uncertainty about the process, the criteria the ACCC would apply and the conditions that would trigger reviews;

- The compatibility of authorisation with overseas liner shipping regimes; and the relatively high administrative and compliance costs.

4.5. In summary, the Commission concluded at that time that these concerns were valid and noted that other countries have granted exemptions from their competition laws to liner shipping Conferences without the need for case-by-case justifications. Imposing a requirement for a case-by-case justification on foreign shipping lines may impose additional costs on carriers and ultimately, Australian shippers.

4.6. Conference/ shipping arrangements, if they were brought under the authorisation provisions, would need authorisation in respect of a number of clauses in their agreements. That is, the agreements would have to be authorised in respect of all forms of conduct, which would involve an extensive and administratively difficult task for each conference agreement.

4.7. Authorisation can only be granted by the ACCC if it is satisfied in all the circumstances that the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result. That is, the ACCC is required to balance the public benefits of the proposed conduct against the diriment to the public that may arise as a result of the conduct.

4.8. This, of course, requires a highly balanced judgement and notwithstanding the clear national interest benefits that arise from the Conference/Discussion Agreement arrangements, the processes involved in authorisation decisions are lengthy, as the ACCC must have regard to all submissions put by any interested party (therefore a long review process is guaranteed). Such a process would be a major problem in administration, time and practicality to both shippers and conference members alike.

4.9. Given that conference agreements are quite varied and the minimum service obligations are arranged as a result of joint discussions between shippers and conference members, it would be highly impractical to go through the authorisation process in respect of any new conference agreements or variations to existing agreements. The current Part X provisions allow much greater flexibility.

4.10. Obviously, there has been no experience with the authorisation provisions to-date as far as conferences are concerned, but there have been attempts at authorisation with other co-operative type arrangements, for example in the coastal trade. Early in 1987 the Australian National Line, Union Steamship (TNT) and William Holyman & Sons proposed the establishment of a joint venture for the provision of mainland Tasmanian cargo services. The objective was to achieve operating economies in the use of vessels and equipment. Vessel utilisation had been low for some time, due primarily to the emergence of a major new operator (Brambles) in the trade and the replacement of the Bass Strait passenger ferry by a vessel with greatly increased cargo capacity. The joint venture would have reduced costs primarily by withdrawing from the trade two of the five ships then operated by the three companies.

4.11. An initial approach was made to the then Trade Practices Commission (TPC) in March 1987. In late April, the TPC informed the parties that it was unconvinced by the arguments. The parties produced further economic argument and the TPC subsequently sought further information on the venture and the competitive environment. An application for authorisation was lodged in July and in late September the TPC handed down its draft determination, which was unfavourable to the parties. The application was withdrawn and plans for the joint venture suspended.

4.12. Eventually the smallest operator withdrew from the trade and in 1992, ANL and the Union Company merged their Bass strait operations to form Coastal Express Line, which provided an integrated, rationalised service using three vessels after a period of five years of wasteful overtonnaging. From the point of view of the competitive structure of the Bass Strait trade, the eventual outcome, shaped by the immovable forces of the marketplace, is in all essentials the same as that which would have emerged from the original joint venture proposal.

4.13. The TPC has also authorised certain co-operative arrangements between tug operators, but this was withdrawn some years later because of "a material change in circumstances".

4.14. Besides the difficulty of the Commission authorising price setting between members of the arrangement or joint venture, there is the lack of certainty in the authorisation process which very much underpins the Part X-type regulatory regime. As the 1986 Task Force reviewing Part X pointed out, although conferences would be able to apply for exemption on public interest grounds and to argue their case to the Trade Practices Commission, the Task Force considered that a case-by-case approach would prove to be administratively cumbersome, costly, and time consuming. Even if the matter was to be decided on a case-by-case basis, a period of uncertainty would still be unavoidable.

4.15. In essence, the competitive nature and market forces of international shipping demand quick turnaround and response times. The likelihood that they will be able to wait during the authorisation process with the ACCC is not only doubtful it is probably commercially unworkable in that in the interim period shippers would not have the same guarantee of services, either in frequency or scheduling.

4.16. There is an appeal process against the TPC denying authorisation, but this would impose even greater costs and further delay.

4.17. In relation to a possible block exemption, reference was made to the situation in the EU and concern was expressed in certain submissions to that enquiry eg. by the Department of Transport and Regional Services that the EU system appears to have involved a relatively high level of intervention by the Competition Directorate (DG IV) to deal with disputes and alleged breaches of Regulation 4056/86. The PC was also concerned that creating such a process in the TPA would be a significant departure from the authorisation process and may have implications for a large number of industries, other than the liner shipping sector.

4.18. An Industry Code of Practice was also considered which could then be authorised. However, submissions to that enquiry in 1999 questioned whether the types of allowable conduct set out in eg. Part X would have any chance of authorisation if they were contained in an Industry Code. The Commission concluded that practical difficulties may arise in designing an Industry Code for liner shipping that would have

significant prospects of being authorised if they covered the types of arrangements already set out in Part X.

4.19. Another alternative to Part X, raised in discussion with the participants and in submissions, was the introduction of a modified form of notification process which was in fact, advocated by the ACCC at that time; being a modified notification process for the liner shipping industry. The Productivity Commission felt that the modified notification regime had several attractive features but one of the major arguments against it was that it would still constitute a specific regime for the liner shipping industry which was the main ground on which some participants of that review criticised Part X. Furthermore, the Commission considered that there was considerable uncertainty as to how frequently and on what basis, the ACCC would decide to examine a notified arrangement. If the notification regime for liner shipping operated in a manner similar to the authorisation process then this would raise the problems identified above. If the notification regime was to be administrated in the same way as Part X, one would call into question the logic of incurring the transitional costs of moving to notification.

4.20. Nothing has occurred in the last five years, in the view of the parties to this submission that would detract from the conclusions reached in that analysis. The question is also raised in the Issues Paper what problems have been experienced with the operation of Part X, in particular by shippers, and how should they be addressed? In relation to outwards services, the Australian Peak Shippers Association has raised concerns similar to those they raised in the 1999 review, opposing Discussion Agreements and the application of Terminal Handling Charges. The issue of THC's has already been addressed and later on in this chapter, we will address the issue of Discussion Agreements. A number of importers in Australia have expressed concern regarding what they saw as a rapid increase in freight rates in a number of Southbound trades from Asia and the ACCC recently investigated those practices as far as the Asia-Australia Discussion Agreement was concerned but could not come to a firm conclusion and the SAL response to that report has already been sent to the Commission.

4.21. However, issues of the need for enhanced communication, adequate notice periods of future rate increases particularly over a longer timeframe are issues that can be addressed more adequately under the existing Part X or under an amended Part X as advocated in this submission. It is important that the responsibility of countries to effectively regulate their outwards trades but still claim jurisdiction over the outwards and inwards trades be recognised in Part X and the amendments in 2000 did recognise this important point by restricting the IAA negotiations on rates to eligible Australian contracts; effectively being contracts negotiated in Australia. However, the IAA has an important role to perform in terms of negotiating inward minimum service levels and land-based surcharges in Australia. It is regrettable that there had not been more meetings between the lines and the IAA, in particularly in terms of discussing the demand and supply of future services in the inwards trade as well as specific issues that arise eg. with the supply of food quality containers.

4.22. It is suggested in the Issues Paper that the Part X arrangements in covering all different types of agreements is a much broader approach (ie. presumably in relation to exemptions) then provided by most of Australia's major trading partners. This conclusion is challenged particularly in relation to Asia and North America which are very important trading partners for Australia. Besides being a more light-handed system of regulation than that which applies in the United States, the exemptions eg. for Discussion Agreements and Consortia etc are very similar to Australia. It is

acknowledged that in Europe, Discussion Agreements have been interpreted as not falling within the block exemption provided by Section 4056/86. What is unique about the Australian regulations is the legislative requirement for formal negotiations between parties to these Agreements and shipper bodies in Australia. The Issues Paper also mentions that the European block exemption is limited to ones that result in the combined market share of the carriers being less than a specified percentage but this is not covered in regulation 4056/86 but is limited to the regulation on Consortia and there has been difficulty in defining the market eg. whether or not it incorporates transhipment opportunities.

4.23. The Issues Paper questions whether Part X should be amended so as to include a specific requirement for Conferences to be open. With the amendments in 2000, Conferences and Discussion Agreements are effectively open. Parties to this submission would also have no difficulty should the Commission recommend that Part X be amended to ensure the confidentiality of Agreements entered into by individual carriers and shippers as this would, in effect, mean no change to existing practices but there may be industry participants who would like to see this practice formalised in the legislation.

Discussion Agreements

4.24. The Commission questions how prevalent is the use of Discussion Agreements in Australian trade routes. Clearly they have grown in scope and influence since the last review but their fundamental operation has not changed and as mentioned above these types of agreements were examined in the last two reviews.

4.25. The 1993 review considered various options and came down on the side on continuing the position under which the registration arrangements for this kind of Agreement continue to be dealt with expeditiously under the present Part X procedures, but the Minister could be given power in exceptional cases, to refer them to a recommended Liner Shipping Authority that was proposed by that review.

4.26. The 1999 review considered the regulation of the Discussion Agreements and reference was made to the submission by the then Liner Shipping Services Ltd “that these Agreements are normally more embracing than Conferences in terms of the number of lines of any particular geographical trade, but are not all embracing. There objective is to reach a non-binding consensus regarding rates, surcharges, rules and other terms and conditions of service in the trade and to adhere to the agreed minimum service levels negotiated with peak shipper bodies. It was noted that members could withdraw on very short notice. It was the view and is also the view of SAL today that these Agreements are to be encouraged as providing the necessary umbrella, not only for stability but also to be the foundation for many of the more investment committed arrangements, such as Consortia Agreements. With minimum service levels they also contribute to trade stability.

4.27. Importantly, there is no evidence that such Agreements have acted as inhibitors to competition and the ACCC in its recent enquiry into the Asia-Australia Discussion Agreement could not locate any evidence of a negative impact.

4.28. The Productivity Commission in 1999 accepted that Discussion Agreements appear to reduce competitive forces but on closer examination it was acknowledged that prohibition may drive independents to join full membership of existing Conferences in

some cases and therefore they may be a better alternative as they are a less restrictive form of cooperation. It was also noted that in most shipping trades where such arrangements occur, the market remains reasonably contestable and this is also the case today.

4.29. Concern was expressed by the Commission how such arrangements would be defined which could well involve complex legal argument, the absence of which appears to have been a notable advantage with the operation of Part X.

4.30. Therefore the Commission found that Discussion Agreements should not be treated differently from other forms of cooperation amongst carriers. Subsequently the Government amended Part X in 2000 on the basis of that report, established a case for the ACCC to investigate what was considered to be special circumstances that could arise under these Agreements and this was the basis on which the ACCC launched its investigation into the AADA. There are therefore, clear safeguards to protect shippers.

4.31. Discussion Agreements do not result in a substantial lessening of competition on any Australian trade route. However, if the exemption was no longer extended to Discussion Agreements, then minimum service levels negotiated with shipper groups would obviously be considerably lower in any particular trade lane and the opportunity to exchange information between shippers and carriers on future likely demand and supply factors would be seriously undermined. Given that there is no evidence that Discussion Agreement have inhibited competition, it is difficult to understand why there would be a recommendation to treat them differently under Part X. However, it is acknowledged that Discussion Agreements having a non-binding consensus decision making basis may not meet the needs of shipper bodies for binding agreements and this submission recommends either non-legislative action being taken to resolve that problem or, if Part X is to be amended, then carriers would propose that a requirement be included in all Agreements registered under Part X that parties be bound to any agreements reached between them and shipper bodies for the period of the Agreement.

CONCLUSIONS

5.1 The Terms of Reference for this inquiry outlined its scope by referring to the fact that legislation/regulation should only be retained if benefits outweighed the costs to the community and if the objectives cannot be achieved more efficiently through other means, including, non-legislative approaches, and regard should be had to the effects on Australian shippers, the general public and efficient resource allocation.

5.2 This submission has clearly outlined that by non-legislative means or a streamlined Part X, it will achieve these objectives and, in particular, will be compatible with the regulatory regimes in most of Australia's international trading partners.

5.3 The Terms of Reference requests that the Commission include in its report the rationale for Part X, quantifying issues as far as reasonably practical, and assessing whether Part X satisfies that rationale. Part X provides for these unincorporated joint ventures called Conferences, Consortia, Discussion Agreements, or other Associations with similar objectives; to offer a considerable number of advantages which include:

- National Interest Advantages
  The current Conference-type arrangements (including Discussion Agreements and Consortia) guarantee supply of adequate, reliable and stable shipping services for Australia's exports. This is particularly important given Australia's drive to become internationally competitive.

- Conference Agreements Encouraging Trade
  Australia is in a unique position in respect of many of its exports, particularly perishable goods such as foodstuffs, etc. The Conference arrangements have ensured, in the past, an adequate and sustained level of specialist cargo services to the Australian shippers' benefit. Without the Conference or Discussion Agreements the supply of such services, eg. refrigerated and other specialised container services, could not have been guaranteed and would not be sustained on a regular and predictable basis.

- Conferences are Part of a Competitive Regime
  Under the existing structure of the Part X arrangements, conferences must operate within a market which is the subject of vigorous competition. There are sufficient competitive alternatives from carriers not party to the Agreements and transhipment operators, so as to ensure the competitive discipline and rigour of the marketplace prevails.

- Conference Arrangements are Transparent
  Under the existing Part X provisions, Conference Agreements for outward and inward bound Australian cargo are open to scrutiny and within the purview of the Australian marketplace. Other countries have seen fit to maintain similar arrangements, ie. keep such arrangements outside their respective anti-trust legislation. To do otherwise would be contrary to their perceived national interest and create uncertainty in a market which requires longevity, continuity and stability of service.

- Economies of Scale and Better Utilisation of Resources
  Consortia shipping arrangements encourage, through slot chartering sharing arrangements, greater economies of scale than could otherwise be achieved under a completely unregulated market, given the current state of technology. Cargo ships are not perfectly devisable units of capital and their presence within the Australian market or environs cannot be instantly called upon to satisfy demand as and when required. Predictability and stability of service go hand in glove with obtaining greater economies of scale and better utilisation of shipping space.

5.4 Importantly, vessels and equipment purpose-built for the Australian and New Zealand trades contain features, the capital and operating costs of which could not be recouped in other trades. This requirement to meet the specific characteristics of the Australian trades means that there is a longer lead-time at the new building stage, and additional investment is often required. The current legislation gives the owner that necessary certainty which allows for long-term planning and confidence in the commercial operating environment. It also means that the long-term commitment to the trade is much more critically defined.

5.5 The approach that has been inherent in the development of the Australian legislation in this area has certainly stood the test of time. Australia has a highly competitive shipping market, with few barriers to entry or exit, and shippers enjoy competitive freight rates which must rank amongst the lowest in the world, despite the limited size of the market, high internal costs, eg. port charges, the distance of Australia from its major trading partners, and the frequency of service which several of its export commodities demand.

5.6 Part X certainly does not restrict competition, in fact this submission has proved that the opposite is the case.

Difficulties if this legislative approach was abandoned

5.7 It is emphasised that Conferences are simply not supporting the continuation of the status quo, but by non-legislative means or amendments to the existing legislation have been proposed which, in the view of Conferences, will further assist in the facilitation and development of Australia's international liner trade.

5.8 It is considered unrealistic simply to apply the current authorisation process in Part VII of the Act, given the impact such a lack of certainty would have on investment in the Australian trades, as well as the cost and lack of timeliness in terms of existing authorisation procedures. Application of that regime would pit Australia against the strength of the regulatory regimes in other countries and the focus of attention would be on resolving jurisdictional problems and the difficulties that arise with the seeking of the extraterritorial application of Australian law. The objectives set under the Australian Government’s approach to international liner shipping policy could not be achieved under such a regime.

5.9 What is often misunderstood is that Australia is, and will continue to be, a small trade. Comparative data has been provided in this submission to support this fact. Shipping lines will not slot charter or form co-operative arrangements in order to serve remote geographic regions, as they currently do, if they do not have the security of being able to discuss and, where appropriate, agree freight rates or at least agreed targets for increases and surcharges.

5.10 It is the recommendation of SAL that if the Australian Government continues to harbour concerns about the operation of Part X, then they should consult with overseas Governments on finding an internationally based solution to any foreseen problems.

5.11 The option of retaining the status quo should not the summarily dismissed, especially if it has the strong support of Australian liner shippers. However, SAL would recommend the following as the means of improving the operation of Part X:

Improvements Not Requiring Amendment

a) The Minister of Transport and Regional Services seeking undertakings from parties to Discussion Agreements that the Agreement be amended so if agreement is reached with a designated shipper body on specific issues, being maximum rates or increases for particular commodities, formulae for surcharges and other terms and conditions of service then the parties will collectively adhere to that agreement for whatever period it covers and not deviate from it. This would overcome the problem identified by some shipper groups that negotiating with Discussion Agreement members was not fruitful because they could only reach agreement collectively on a non-binding consensus basis which may not last for very long. It is acknowledged by parties to Agreements registered under Part X that increased communications and consultation can only lead to better outcomes for all and they are willing to play their part in promoting that result.

b) As representatives of the Minister, senior officers from the Department of Transport and Regional Services could also play a more conciliatory and facilitative role when there is a failure to reach agreement. Background investigations could be undertaken, where required, by the Bureau of Transport and Regional Economics to assist the parties and, in any event, it would provide better informed policy advice to the Minister on the veracity of the arguments of individual parties to the negotiation. This is not proposing a more interventionist role for the Government as commercial solutions to the problems that arise would remain the priority, but it is only reinforcing and formalising a role already provided for, to some extent, under the Part X regime, for the Minister's representative.

Improvements Requiring Amendments to Part X

a) In many ways the roles assigned to the ACCC under Part X are ones which they cannot adequately fulfil. Asking a domestic competition regulator totally opposed to price setting on any level to investigate complaints under a regulatory regime that provides limited exemptions in that respect, even of a limited nature and a regime that governs an international industry of this kind requires reconsideration. If Part X remains unchanged, then the role for the ACCC as a reviewing body would remain but they could be used as a last resort.

b) There are also some anomalies in Part X as amended in 2000, namely that negotiations on "blue-water" rates in the inwards trades with the peak importer body is restricted to eligible Australian contracts but this is not the case as far as the investigation of "exceptional circumstances" by the ACCC is concerned.

c) Furthermore, carriers, parties to inward agreements are required to negotiate collectively agreed Australian land based charges with the Peak Importers Association of Australia (the IAA) but the Peak Exporter Body (APSA) requires carriers in the outwards trades to negotiate charges such as Terminal Handling Charges (THC's) at destination as well as at point of origin in Australia. It is recommended that if Part X is amended, that these anomalies be removed and that shipper bodies should only negotiate land based charges in Australia and leave charges at destination to be considered under the regulatory regimes of those other countries.

d) Furthermore, if Part X is to be amended then the role of the ACCC should be reconsidered as noted above and a system of money penalties introduced for breaches of Part X that really do not warrant withdrawal of the exemption. For most cases, such a withdrawal would have an adverse impact on the shippers as well as shipowners. The detail of the new penalty regime could be fleshed out at a later stage if it was decided to proceed in this direction.

e) It is the view of SAL that the registration process could be expedited as far as variations to existing registered Agreements is concerned such as eliminating the need for a delay of 30 days after final registration before the exemption for the variation comes into effect. This delay period serves no discernable purpose for varied Agreements.

f) In addition, requirements for Discussion Agreements to reach a binding agreement outlined above (ie. with designated shipper bodies in specified circumstances) could be included in Part X itself as a condition of the registration of a Conference Agreement as defined in Part X.

g) Strong and well resourced shipper bodies are an integral part of Part X and SAL would not object to any recommended measures to enhance that role from the point of view of Government financial support.

5.12 SAL would support reviews from time to time of this legislation, particularly in the light of the changing international liner shipping scene and the difficulty of forecasting the likely challenges in ten to fifteen year's time, given the rapidly changing international liner shipping environment.

LIST OF SAL MEMBER SHIPPING LINES PARTY TO CONFERENCES/DISCUSSION AGREEMENTS REGISTERED UNDER PART X

Northbound Agreements

Australia-United States ContainerLine Association

Area Served:

Direct and indirect trade from ports and points in Australia to ports and points in the United States.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Lykes Lines Limited LLC

Australia/United States Discussion Agreement

Area Served:

Direct and indirect trade from ports and points in Australia to ports and points in the United States.

Member Lines:

Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Hamburg Sud Australia Pty Ltd
Far Eastern Shipping Company
Lauritzen Cool AB
P&O Nedlloyd Limited
Seatrade Group NV
Lykes Lines Limited LLC
AP Mollar - Maersk Sealand

US Pacific Coast Oceania Agreement

Area Serviced:

Ports in Australia to and from ports in West Coast North America and Fiji/Tahiti.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Lykes Lines Limited LLC
Far Eastern Shipping Company
Maersk Sealand

Australia-Canada ContainerLine Association

Area Served:

Ports and points in Australia to ports and points in Canada.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Lykes Lines Limited LLC

Australia Canada Discussion Agreement

Area Served:

Ports and points in Australia to ports and points in Canada.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Lykes Lines Limited LLC

Australia Mexico Discussion Agreement

Area Served:

Ports and points in Australia to ports and points in Mexico.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Lykes Lines Limited LLC

Australia Caribbean Discussion Agreement

Area Served:

Ports and points in Australia to ports and points in the Caribbean.
Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd

Australia/South East Asia Trade Facilitation Agreement

Area Served:

This Agreement covers the trade from ports and points in Australia, on the one hand, to Ports and points in Singapore, Malaysia, Thailand, Indonesia, Brunei, Vietnam and Cambodia.

Member Lines:

ANL Container Line Pty Limited
APL Lines (Australia)
Hyundai Merchant Marine Co Ltd
Kawasaki Kisen Kaisha Ltd
Maersk Sealand
Malaysia International Shipping Corporation Berhad
Mitsui OSK Lines Ltd
Nippon Yusen Kabushiki Kaisha
Orient Overseas Container Line Ltd (Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd)
P&O Nedlloyd BV
P&O Nedlloyd Limited
Pacific International Lines (Pte) Ltd
PT Djakarta Lloyd
RCL Feeder Private Ltd
Zim Israel Navigation Co Ltd

Australia/North and East Asia Trade Facilitation Agreement

Area Served:

From ports and points in Australia, on the one hand, to ports and points in East Asia and Japan/Korea.

Member Lines:

ANL Container Line Pty Limited
Kawasaki Kisen Kaisha Ltd
Mitsui OSK Lines Ltd
Nippon Yusen Kabushiki Kaisha
Orient Overseas Container Line (Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd)
P&O Swire Containers Limited (providing shipping services on behalf of The Eastern & Australian Steamship Co Ltd and The China Navigation Company Ltd)
Zim Israel Navigation Co Ltd
MSC Mediterranean Shipping Co SA
China Shipping Container Lines Co Ltd
COSCO Container Lines
Far Eastern Shipping Company
Hamburg Sud Australia Pty Ltd
Hyundai Merchant Marine
Maersk Sealand

Australia Northbound Shipping Conference

Area Served:

Ports in Japan, Korea, Philippines, Hong Kong, Taiwan and China.

Member Lines:

ANL Container Line Pty Limited
Kawasaki Kisen Kaisha Ltd
Mitsui OSK Lines Ltd
Nippon Yusen Kabushiki Kaisha
Orient Overseas Container Line (Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd)
P&O Swire Containers Limited (providing shipping services on behalf of The Eastern & Australian Steamship Co. Ltd and The China Navigation Company Ltd)
Zim Israel Navigation Co Ltd

Australia to Europe Liner Association

Area Served:

Europe, including Aden, Djibouti, Red Sea and Gulf of Akaba Ports, Egyptian and North African Ports, Mediterranean Ports, Adriatic Sea, Aegean Sea, Turkish and Black Sea Ports, Italy, Portugal, Iberian Peninsula, France, Belgium, Netherlands, Germany, Scandinavian and Baltic Sea Ports, the United Kingdom and Eire.

Member Lines:

CMA CGM
Compagnie Maritime Marfret
Consortium Hispania Lines
Contship Container Lines, a division of CP Ships (UK) Ltd
Hamburg Sud Australia Pty Ltd
Hapag-Lloyd Container Line GmbH
P&O Nedlloyd Limited

Australia/New Zealand Discussion Agreement

Area Served:

Serves Australia and New Zealand as part of their voyage to both East and West Coasts of North America, Northern Europe and the Mediterranean.

Member Lines:

Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Contship Containerlines, a division of CP Ships (UK) Limited
Far Eastern Shipping Company
Hamburg Sud Australia Pty Ltd
Malaysia International Shipping Corporation Berhad
MSC Mediterranean Shipping Co SA
P&O Nedlloyd Limited
Pacific International Lines (Pte) Ltd

Australia Fiji Discussion Agreement

Area Served:

Ports and points in Australia to ports and points in Fiji.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Pacific Forum Line (NZ) Ltd
Neptune Shipping Line Pty Ltd

Australia Middle East Gulf and West India/Pakistan/Sri Lanka Conference

Area Served:

Ports in the Middle East Gulf Countries, including Oman, United Arab Emirates, Bahrain, Qatar, Kuwait, Iran and Saudi Arabia, (but excluding the Red Seas Ports), and Ports in West India, Pakistan and Sri Lanka.

Member Lines:

Nippon Yusen Kabushiki Kaisha
P&O Nedlloyd Limited/P&O Nedlloyd BV (acting as one party)

Southbound Agreements

United States Australia Discussion Agreement

Area Served:

Direct and indirect trade from ports and points in United States to ports and points in the Australia.

Members:

Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
CMA CGM
Contship ContainerLines, a division of CP Ships (UK) Limited d/b/a Ocean Star Container Line
Far Eastern Shipping Company
Hamburg Sud Australia Pty Ltd
Marfret
Lykes Lines Limited LLC
P&O Nedlloyd Limited
Wallenius Wilhelmsen Lines
Maersk Sealand

US Pacific Coast Oceania Agreement

Area Serviced:

Ports in Australia to and from ports in West Coast North America and Fiji/Tahiti.

Member Lines:

P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Australia-New Zealand Direct Line, a Division of CP Ships (UK) Limited
Lykes Lines Limited LLC
Far Eastern Shipping Company
Maersk Sealand

Asia-Australia Discussion Agreement

Area Served:

Ports from China/East Asia, Japan and Korea to Australia.

Member Lines:

ANL Container Line Pty Limited
China Shipping Container Lines Co Ltd
COSCO Container Lines
Far Eastern Shipping Company
Hamburg Sud Australia Pty Ltd
Hanjin Shipping
Hyundai Merchant Marine Co Ltd
Kawasaki Kisen Kaisha Ltd
Maersk Sealand
Mitsui OSK Lines Ltd
MSC Mediterranean Shipping Co SA
Nippon Yusen Kabushiki Kaisha
Orient Overseas Container Line
P&O Swire Containers
Zim Israel Navigation Company Ltd

South East Asia and South Asia/Australia Trade Facilitation Agreement

Area Served:

Singapore, Malaysia, Thailand, Indonesia, Brunei, Vietnam, Cambodia, India, Pakistan, Sri Lanka and Bangladesh to Australia.

Members:

ANL Container Line
APL Lines (Australia)
Hanjin Shipping Co Ltd
Hyundai Merchant Marine
Kawasaki Kisen Kaisha Ltd
Maersk Sealand

Malaysia International Shipping Corporation Berhad
Mitsui OSK Lines Ltd
Nippon Yusen Kabushiki Kaisha
Orient Overseas Container Line Ltd
P&O Nedlloyd BV
P&O Nedlloyd Limited
Pacific International Lines (Pte) Ltd
PT DJakarta Lloyd
RCL Feeder Private Ltd
Zim Israel Navigation Co Ltd

Europe to Australia and New Zealand Conference Members' Agreement

Area Served:

Europe to Australia and New Zealand

Members:

Associated Container Transportation (Australia) Limited
CMA CGM
Consortium Hispania Lines
Compagnie Maritime Marfret
Contship ContainerLines, a division of CP Ships (UK) Limited
Hapag-Lloyd Container Line GmbH
Hamburg Sud Australia Pty Ltd
P&O Nedlloyd Limited
P&O Nedlloyd BV
Shipping Corporation of New Zealand Limited

New Zealand/Australia Discussion Agreement

Area Served:

New Zealand to Australia

Members:

Contship ContainerLines, a division of CP Ships (UK) Limited
Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited
P&O Nedlloyd Limited
Hamburg Sud Australia Pty Ltd
Far Eastern Shipping Company
Malaysia International Shipping Corporation Berhad
Pacific International Lines (Pte) Ltd
MSC Mediterranean Shipping Company S.A.
Wallenius Wilhelmsen Lines
New Guinea Australia Line Pty Ltd
Australia-West Pacific Line (NG) Pty Ltd
Papua New Guinea Shipping Corporation Pty Limited

As at July 2004

A BRIEF HISTORY OF CONFERENCES, PAST REVIEWS OF THE UNDERLYING REGULATORY SYSTEM AND REGULATORY REGIMES IN OTHER COUNTRIES.

b1. Historically, the provision of scheduled shipping services started when the innovation of steam propulsion enabled carriers to give their shippers assured dates of delivery, which was impossible when only sailing vessels were employed. However, shipping operations were easily and severely disrupted by the unfettered competition which prevailed because of a number of events, including the advent of steam propulsion - the same technological advance that allowed scheduled services to start in the first place - had greatly increased the effective supply of shipping space. In addition, another contributing factor to this process was the opening of the Suez Canal in 1869.

b2. There were no beneficiaries of the savage, competitive excesses of the rate wars that followed; those shippers who initially gained from unprecedentedly low rates, later found themselves stranded when their regular carriers had been driven out of business. It became patently evident that a commercial solution was urgently needed to quell the inherent instability of the liner trades, in the interests of both the carriers and their customers. The breakthrough came with the development in the late nineteenth century of the institutional structure which came to be known as the Conference system. Thus the Calcutta Conference was formed in 1875 and is often cited as being the first, although it is understood that Conference-type arrangements existed in the North Atlantic prior to this.

b3. A major reason behind the formation of Conferences was the regulation of competition between carriers, through the setting of mutually agreed freight rates and conditions of service, so that the trade might benefit from the rationalisation that co-ordination allows, but competition prevents. There were also other important contributory motives. Thus the opening page of the Calcutta Conference Agreement explicitly states the purpose behind the Agreement is to operate "in the way most advantageous to the trade and those engaged in it", with the object being to "maintain a regular and sufficient supply of steamship tonnage to meet the requirements of the trade", and "generally to consider the reasonable wishes of Governments, Merchants and Shippers".

b4. There have been many enquiries into the Conference system. The Royal Commission on Shipping Rings, reporting in the UK in 1909, concluded that Conference arrangements are necessary if shippers are to be provided with regular and efficient services at stable rates. The Commission also regarded it as a necessity to permit closed Conferences, and was totally opposed to any Governmental regulation in such a complex multi-national industry.

b5. Shortly afterwards, in 1914, the Alexander Committee reported in the USA, and like the Royal Commission, it too saw Conferences as a necessary means of regulating competition in order to avoid the wastefulness of the price wars that would otherwise occur. In addition, the Committee extolled the virtues of the regularity of service, the faster and better ships that the Conference system provided. However, unlike the Royal Commission which advocated the development of shippers' councils to prevent any possible Conference abuses, the Alexander Committee, being conditioned by prior legislation such as the Interstate Commerce Act and the Sherman Act, recommended

Governmental regulation of Conferences. Its findings were enacted into law in the 1916 Shipping Act.

b6. Also in the USA, the period 1958-1961 saw the whole spectrum of Conference practices - especially dual rate contracts and the anti-trust immunity of Conference - investigated by a series of special Congressional hearings. Again the same positive conclusions were echoed; the Conference system (with dual rate contracts) was necessary in order to avoid destructive rate wars amongst shipping lines and to ensure stability in the trades.

b7. In the U.K. the 1970 'Committee of Inquiry into Shipping', (the Rochdale Committee) also investigated the desirability of Conferences. The report strongly supporting the Conference system, recommended "the opportunity for providing a planned systematic series of sailings" that Conferences provided, and concluded that "the closed Conference, with fully rationalised sailings, therefore appears to us most likely to serve the best interests of both shippers and shipowners".

b8. In addition to the major official enquiries mentioned above, the question of the desirability of Conferences has also been raised in many countries in the course of the development both of their shipping and their anti-trust policies.

b9. Australia's longest established Conference is the Australia to Europe Liner Association. Originally operating under the name Oversea Shipping Representatives Association (OSRA), it was formed in 1912 and began allocating tonnage and drawing up freight schedules in an effort to bring order to our shipping services. OSRA's effectiveness as a Conference however, was severely handicapped initially by Australian law which prevented it offering deferred rebates or discounts. Such incentives were considered necessary to encourage shipper loyalty and in exchange for a more assured cargo base, Conferences were able to fulfil their commitments to industry guaranteeing shipping space to meet the ordinary requirements of the trade.

b10. The profitability of the Australian trades declined so critically that by 1928 several Lines indicated that unless the losses ceased they would be forced out of the Australian trade. Rumours of vastly increased freight rates to end these losses prompted the then Prime Minister, Mr. Bruce, to set up a meeting to discuss overseas shipping - this was known as the Imperial Shipping Conference. This met in Sydney in April 1929, and included representatives of shippers (exporters) and shipowners.

b11. The joint meeting recommended in effect, a fully closed Conference system to be achieved through a consultative body representing both groups. The formation of this body, called the Australian Overseas Transport Association (AOTA) was approved by the Government and it comprised exporters and shipowners concerned with the trade from Australia to Britain and the Continent.

b12. The Australian Overseas Transport Association secured economies by rationalising tonnage, approving freight rates and approving agreements between individual shippers and shipowners involving wool, general cargo, meat, dairy produce, apples and pears, canned and dried fruits. The section of the Australian Industries Preservation Act which had prevented such agreements was amended to allow participants in agreements, made with AOTA approval, to use the procedures of a closed Conference complete with deferred loyalty rebates, on the routes from Australia to Europe.

b13. The provisions of the original Part X of the Trade Practices Act were formulated in the mid 1960s. Between the early announcement by the Government in December 1962 of proposals for new Trade Practices legislation and the introduction of the shipping amendments to the Trade Practices Act in 1966, there were numerous representations to Government by shipowners and shippers. The subsequent suggestions for new legislation were in line with the provisions in the Australian Industries Preservation Act which exempted the agreements between shipowners and shippers rather than the Conference Agreements. The object of the proposed provisions, whilst accepting Conferences and their limitation on competition, was to give organised shippers a voice and to place the Government in a position to influence the Conferences not only to give organised shippers that voice, but also to provide services having due regard to the need for ocean shipping to be efficient, economical and adequate.

b14. The Minister was able to seek appropriate undertakings from shipowners, and refusal to do so, or failure to have due regard for the need for efficient, economical and adequate services, could lead to disapproval of the Conference Agreement. At every point, including any inquiry by the Trade Practices Tribunal, there was an opportunity for the Conference to adjust its arrangements to make them acceptable. Similar provisions applied to a shipowner providing the only liner service on a particular route. An Amendment was passed in 1971 to establish the Australian Shippers' Council as the Peak Shipper Body, and it began operations in the following year.

b15. One of the inherent problems for the international liner shipping industry is the endemic over-capacity caused, to some extent, by market imperfections such as shipbuilding subsidies, vessel operating subsidies, special taxation provisions relating to investment in shipping, and special taxation treatment for ship operators in certain parts of the world. The significant growth in developing country fleets since the early 1980s is also relevant when assessing the level of current and future competition.

b16. In a review of this nature, it is important to clearly understand the different types of arrangements that currently apply in the international liner shipping industry and a table summarising these arrangements is set out in an appendix to this Attachment. The industry would define a shipping Conference as comprising groups of major shipping Lines that unite to offer a range of sophisticated services and cargo-carrying equipment, and, whilst the Lines compete freely in the marketing sense within that framework, they work together to provide a comprehensive and rationalised shipping service covering a wide range of ports in accordance with the needs of the traders. In order to fulfil that role, Conferences need the ability to agree on freight rate increases and surcharges and do so periodically according to market conditions and requirements.

b17. On the other hand, Part X defines "Conference" as meaning "an unincorporated association of two or more ocean carriers carrying on two or more businesses each of which includes, or is proposed to include, the provision of liner cargo shipping services." This definition is very broad and would cover a number of collusive and rate setting arrangements that would, or possibly could, contravene Part IV of the Act, and therefore Lines need to register their Agreements and any variations to those Agreements under Part X to gain the necessary limited exemptions from Part IV.

b18. By way of comparison, the 1984 US Shipping Act, as amended by the Ocean Shipping Reform Act of 1998, defines a "Conference" as meaning "an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilise a common tariff, but the term does not include joint

service, consortium, pooling, sailing or transhipment arrangement." Nevertheless, these types of Agreements are covered by the Act, under Section 4. Interestingly, a distinction is drawn under the US Act between Loyalty Agreements and Service Contracts, with apparently the distinguishing feature being a Loyalty Agreement includes a deferred rebate arrangement.

b19. The EU Regulation 823/2000 (which extended the block exemption of EU Reg. 870/95) defined a "consortium" as meaning "an agreement between two or more vessel-operating carriers which provide international liner shipping services exclusively for the carriage of cargo, chiefly by container, relating to a particular trade and the object of which is to bring about co-operation in the joint operation of a maritime transport service, which improves the service which would be offered individually by each of its members in the absence of the consortium, in order to rationalise their operations by means of technical, operational and/or commercial arrangements, with the exception of price fixing." It should be noted that some consortium agreements registered under Part X include price fixing, if required.

b20. The repeal of a Part X type regulatory regime would destroy much of what has been achieved, including the increasing reliability of sailing schedules which has been an important benefit of the reform that has been achieved on the waterfront in Australia since 1998. Any attempt to simply apply the existing provisions of Part VII would be unworkable and a clear rejection of international comity. Professor James Crawford's opinion on this issue is attached to this submission.

b21. In the Issues Paper circulated by the Independent Committee of Inquiry into a National Competition Policy Review,[13] it was stated that the concept of competition can be understood in terms of four basic parts:

a) *"Striving or potential striving - recent work suggests that the real likelihood of competition occurring (potential striving) has a similar effect on the performance of a firm as actual striving. Thus the openness of a market to potential rivals - known as "contestability" - is recognised as having similar effects to actual head-to-head competition.*

b) *Two or more persons or entities - in some cases competition between a few large firms may provide more economic benefit than competition between a large number of small firms. This may occur due to economies of scale and scope.*

c) *Against one another - in practice, competition occurs through firms seeking to provide a different mix of benefits to consumers, some of which are already reflected in price and others are reflected in elements of value to the consumer, such as service, quality or timeliness of delivery.*

d) *Related objects - economics has long recognised competition between substitutes."*

b22. It is a basic tenet of the SAL submission that the current operations of international liner shipping in the Australian trades meet these four basic criteria; namely that it is a

[13] Issues Under Consideration of the Independent Committee of Inquiry into a National Competition Policy Review (the Hilmer Inquiry), Feb. 1993, pp. 3 & 4.

contestable market, that there are economic benefits in Lines co-operating together due to the economies of scale and scope, that the range of different services provided by these co-operative arrangements meet the demands of the marketplace and therefore provide value-added services to Australian exporters and importers and, besides there being direct competition for conference services, there are increasingly the substitutes of relay services, especially where these meet the requirements of particular exporters. SAL has commissioned Thompson Clark Shipping and ACIL to prepare a paper, setting out the economic arguments in more detail. An important question to be answered is whether international liner shipping has special characteristics, both of an economic nature and bearing in mind it is an international industry, that requires special treatment in terms of national competition policy.

Past Reviews of Part X

b23. In 1977 the Minister for Transport initiated a review of Australia's overseas cargo shipping legislation. Amongst the findings of this review were the following:

- "*The Conference system is generally supported by shippers and Governments.*
- *An advantage of a closed Conference system is that it provides an opportunity for Lines to rationalise services so as to provide a desired level of service at a minimum of costs.*
- *Because of major disadvantages with the Australian Government attempting to regulate rate and service matters, it is appropriate that primarily, reliance should continue to be placed on commercial negotiations to resolve matters between shippers and shipowners. There is little support for introduction of direct regulation over shipping rates and services.*
- *The conduct of negotiations on the basis of efficiency of Conference practices and the competitive forces to which they must respond is consistent with economic principles, with the policy of Government to rely on commercial forces, and with the new views of the Australian Shippers' Council."*

b24. Although a Bill to amend the old Part X was introduced into Parliament in May 1980, it was not proceeded with as both shippers and shipowners felt the principles underlying the provisions of Part X at that time were suitable as a framework for commercial shipping practices.

b25. In 1986, an Industry-based Task Force reported to Government on a review of Australia's Overseas Liner Shipping Legislation. Its wide-ranging recommendations included:

a) A Shipping Act, separate from the Trade Practices Act.

b) A Shipping Industry Tribunal (SIT) should be established.

c) Shipowner Agreements should be publicly available and should be subject to a "public interest" test along the lines of the exceptional circumstances test now contained in Part X.

d) Shipowners should be prohibited, amongst other things, from

- unreasonably discriminating between shippers;
- unilaterally imposing 100% loyalty contracts on shippers;
- engaging in predatory pricing practices.

e) That there be one Designated Shipper Body.

f) Allegations of unfair competition from artificially low cost shipping should be referred to the SIT for subsequent report to the Government.

g) Australia should not ratify the UN Convention on a Code of Conduct for Liner Conferences.

h) With the possible exception of the already highly regulated trades, Australian trading and shipping interests will be secured best by maintaining an open, fair and competitive market and encouraging the expansion of Australian flag shipping on a commercially competitive basis.

b26. Following extensive consultation with industry, the Government introduced in 1989 the Trade Practices (International Liner Cargo Shipping) Amendment Act which picked up a number of the recommendations of the Task Force, but not the separate Shipping Act or a special Tribunal. Following is a brief outline of the new Act.

a) An objective (in part) was that Conference operations should be permitted in order to ensure Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive.

b) The exemption from the restrictive business practice provisions of the Act for both inward and outward trades was limited to the blue water parts of the shipping service unless door-to-door rates were fixed, then terminal-to-terminal rates could be fixed.

c) Conference Agreements in the outwards trade only were required to

- have minimum conditions including net shipper benefits;
- be public unless granted confidentiality in specific circumstances;
- go through a complex registration process before the necessary exemptions could be granted;
- provide minimum service levels to be negotiated with the Designated Peak Shipper Body. There was also a provision for Secondary Designated Shipper Bodies.

d) Conferences in the outwards trade were subject to Section 46 (prohibition of abuse of market power) and Section 47 (6) and (7) which prohibits third-line forcing.

e) The then Trade Practices Commission had a role in investigating complaints.

f) Unfair competition (between shipowners) could be regulated in certain circumstances following a Trade Practices Tribunal Hearing.

g) There was a substantial increase in the power of the Minister to regulate Conferences.

b27. A Part X review panel comprising Mr. Patrick Brazil, AO Chairman, Emeritus Professor H.M. Colson and Captain John Evans, AM, was established in April 1993 to undertake an independent review.

b28. The panel's major recommendations involved:

- the continuation of the regulatory regime embodied in Part X;
- the extension of Australia's regulatory influence to our inwards liner trades;
- enabling closer scrutiny of Accord and Discussion Agreements between Conferences and independent ocean carriers in appropriate cases;
- the establishment of a Liner Cargo Shipping Authority to carry out the various investigation functions currently entrusted under Part X;
- the continuation of statutory safeguards for the unhindered commercial operation of Australian flag shipping in our international liner trades.

b29. The review panel reported that they were confident that adoption of the recommendations will serve and protect Australia's trading interests and the resultant regulatory regime will be in harmony have those of our trading partners.

b30. The then Labour Government considered these recommendations and accepted them with the exception of regulating the inwards liner trades in order to avoid jurisdictional conflict, and also decided against establishing a specific industry regulator. Given the proposed review of Part X, the Coalition Government, when it came to power in 1996, did not proceed to enact those recommendations.

b31. In relation to the jurisdictional issue, the Brazil Committee found that "… the more usual anti-trust approach of outlawing collusive and other anti-competitive practices in the interests of competition, arises from a view that the conference system in particular is probably beyond the scope of any one nation to prohibit effectively. Combinations of shipping companies are a long-standing and widespread phenomenon in the liner cargo shipping industry. Any attempt by one jurisdiction to outlaw combinations could see their arrangements shift overseas so as to be beyond the effective reach of that jurisdiction."

b32. Similarly, the difficulty of substituting Part VII of the Act, particularly the authorisation provisions, for Part X was also raised during the review. The panel's conclusion[14] in relation to the authorisation process was: "Where conditions exist which make it

[14] Report of the Part X Review Panel 1993, pp. 93-100

possible to reach commercial solutions without intervention, and where significant elements of the public interest cannot be shown to be present, the insistence on costly procedures with uncertain outcomes cannot be justified. The approach of Part X is to allow certain industry behaviour, until it can be shown to be in contravention of the established rules." The panel went on to comment: "There are many reasons for opposing the 'one shoe fits all' approach to competition policy."

b33. The panel noted that "the removal of Part X could well be ineffective as de facto Conferences in the Australian trades could readily be organised from offshore. To the extent that it did occur, Conferences would continue to exist but without the obligations and other restraints, particularly in the form of countervailing shipper power. Another possible outcome is the domination by major Lines; also, removal would mean that Australian law would be out of harmony with the laws of all of our trading partners."

b34. The question must remain what regulatory procedures are required to achieve the objectives set by Government for its international liner shipping policy and its protection of exporter (and to a lesser extent importer) interests. Part X achieves certainty in application by being essentially an automatic authorisation process on the basis that investigation of any prohibited behaviour does not result in a withdrawal of that exemption. This has supported the massive investment in the Australian liner trades to-date.

b35. There should also be flexibility to deal with the changing international liner shipping arrangements and efficiency in terms of meeting the requirements of traders as set out in the existing Part X. It is difficult to see how a process that is lengthy, uncertain and costly will more effectively achieve such objectives.

b36. In its submission to the Brazil Committee of inquiry, the then Trade Practices Commission stated that one way to accommodate the industry's need for certainty (to underpin investment decisions) and the need to maintain some scrutiny of Agreements, is to guarantee exemption for all Agreements during a preliminary transitional stage of, for example, five years. Such a period would definitely be necessary to maintain the economic efficiency so evident in existing rationalised services during such a transitional stage, and the Commission added: "A fixed time limit for the Commission to decide the application (for example 45 days) could be applied and the effect of any appeal to the Trade Practices Tribunal could be to extend the protection for the current Agreement until the Tribunal has made its decision. The need for certainty in the application of any such regulation is clearly acknowledged."

b37. As the Australian National Line said in its submission to the Brazil Committee of Inquiry:

> "*In the real economy of a modern society, industrial concentration is the norm rather than the exception and the competition policy of the future will need to manage that reality, not deny or oppose it. This is precisely what Part X does. It accepts the fact that the inherent characteristics of liner shipping imply that it will be a concentrated industry and that this concentration will bring with it many benefits to users, and it sets in place a system of checks and balances which are designed to ensure the potential negative side-effects of this concentration do not materialise."*

On 15 September, 1999 Dr Neil Byron, Presiding Commissioner of the Productivity Commission and Dr Robin Stewardson, Associate Commissioner presented their report on the review of Part X of the Trade Practices Act, 1974 to the Assistant Treasurer.

The key messages of that report were:

- As an importer of liner cargo shipping services, Australia's national interest is served by obtaining liner shipping services that meet shippers' diverse needs at the lowest-possible price.

- Because transport costs and service levels directly affect their competitiveness, Australian exporters and importers have a direct interest in obtaining the best-possible deal from foreign carriers. Thus pursuit to their self interest in relation to liner shipping also serves the national interest.

- Conferences – groupings of liner carriers which coordinate services on individual trade routes – can be an efficient way of meeting an important part of shippers' diverse demands (in terms of frequency, reliability etc). But any form of market cooperation increases the potential for market power.

- The tension between the benefits and potential costs of conference arrangements has led to special treatment of conferences worldwide. Part X of the TPA is an industry-specific, legislated industry code which exempts conferences from some general provision of the TPA, *provided* they meet certain obligations to Australian exporters and they do not misuse any market power. Exporters also are allowed to form collective buying groups to enhance their negotiating power, backed up by regulatory intervention as they see fit.

- The current regulatory approach has provided the national interest because Part X allows the efficiencies of conference arrangements while letting competition from non-conference lines and the countervailing power of Australian exporters constrain their potential market power.

- Repeal of Part X in favour of a potentially more interventionist approach under the general (authorisation) provisions in Part VII of the TPA, is unlikely to deliver greater net national benefits. Scope for successful intervention appears limited and, moreover, the general provisions of the TPA are likely to involve greater administrative and compliance costs than Part X.

- While a Part X-type outcome for regulation of liner shipping *could*, in principle, be replicated under Part VII (especially if block authorisation were allowed) or under a special notification procedure, there can be no certainly that these alternatives would, in practice, meet the criteria as well as Part X does. Nor could they be introduced at negligible transitional cost.

- The ultimate test for any regulation or legislation is whether it promotes the national interest and does so more efficiently than alternatives. Part X passes the test.

The Government accepted the majority of these recommendations in the report in terms of amending the Act (the amended Part X came into force in March 2001) but also increased regulatory intervention as far as inwards shipping was concerned.

The main amendments involved;

- Registration of inwards Agreements if exemptions required under Part X and obligations imposed on parties to those registered Agreements to negotiate with a peak importer shipper body in certain circumstances (eg. land-based charges in Australia and in relation to eligible Australian contracts).

- Conference exemptions were further restricted to apply only to or from an Australian container terminal or container inland terminals declared by the Minister for Transport and Regional Services (but not shippers' premises).

- Potential new members of Conference Agreements could not unreasonably be excluded from Conferences.

- Additional powers were given to the Minister and the ACCC to deal with exceptional circumstances that may have detrimental effects on Australian exporters or importers (unreasonably increasing transportation costs and/or unreasonably reducing transportation services).

Regulation of International Liner Shipping in Australia's Major Trading Partners

b38. In terms of the exemption, Part X is in line with the regulatory regimes as applied to liner shipping by Canada, the European Community, Japan, Republic of Korea, Taiwan, New Zealand and the United States and many other countries with pro-competition legislation, and they all follow a consistent pattern in that they all provide anti-trust immunity or exemption from their primary restrictive business practices legislation.

b39. All major trading countries and blocs recognise the existence and importance of shipping conferences in their international trading activities and have recognised the limitations in applying their respective domestic anti-trust legislation (if it exists) to what is an international market for services - a market in which national strategic interests often transcend domestic anti-trust issues.

b40. For the free and uncomplicated movement of international trade it is important that there is a broad synergy of intent in the way in which national anti-trust legislation handles international maritime operations.

b41. There are some differences between the application of the specific regulatory regimes that apply. The United States, for example, requires all agreements and freight rates to be filed. Japan requires, in principle, all agreements to be filed but only outbound traffic is affected in practice; and New Zealand claims jurisdiction over outbound services only but has no filing requirements. Korea and Taiwan require agreements to be filed for both inward and outward liner cargoes as does the Peoples Republic of China.

b42. An important difference is that the U.S. closely regulates the liner trades (via the Federal Maritime Commission under the terms of the 1984 US Shipping Act) and requires each Agreement to be given individual consideration. None of the other regimes have such a formal approval procedure.

The US Trades

b43. The basis of the US Shipping Act 1984 is that for every form of agreement between carriers, including the provision of multimodal transport services, there will be an automatic exemption and the agreement will become effective within 45 days unless the FMC takes injunctive relief in the U.S. District Court of Colombia to prevent the agreement coming into operation because it is substantially anti-competitive.

b44. The FMC determines whether an agreement is substantially anti-competitive by applying a standard test which is to determine if the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.

b45. Since the adoption of the 1984 Shipping Act and the use of the general standard, there has not been a single instance of the FMC seeking to enjoin the operation of an agreement. Thus, ocean carriers indeed have been provided with a considerable degree of assurance and certainty with respect to their ability to enter into and implement various types of co-operative agreements.

b46. Shipowners have welcomed the considerable degree of legal certainty that applies under U.S. legislation, with the burden of proof on the FMC to reject an agreement. Prior to 1984, conferences in the U.S. trades were very unstable because of the threat of the application of anti-trust principles to conference activities and the lack of clear multimodal authority. The latter problem created a large hole in the ability of conferences to offer efficient transportation services. Both these problems were remedied with the 1984 Shipping Act.

b47. Following three years of investigation, the Ocean Shipping Reform Act of 1998 amended the US Shipping Act of 1984 with effect from 1 May 1999. The new Act retains the existing anti-trust immunities that apply to shipping Conferences, while introducing a number of amendments in terms of the operation of the Act, which in some ways is moving closer to the Part X regime. Importantly, the main policy statement objectives stated in the new Act are to provide a regime that is in harmony with international shipping practice, and which also promotes the growth and development of United States exports.

b48. The major modifications involved were:

- Conferences must permit their members to enter into individual service contracts, although there is no inhibition on a Conference entering into a service contract with a shipper or shippers.

- The name of the shipper and rate involved must be kept confidential to the parties, but those particulars and the Agreement itself must be filed, confidentially, with the FMC.

- Replacement of loyalty contracts with service agreements which permit a shipper's volume commitment under a service contract to be expressed as either a specific volume or as a percentage of the shipper's cargo.

- Conferences must provide their members with the right of independent action with the maximum notice of five calendar days (compared to ten at present) and

this freedom to take such action must be allowed whether or not those rates are required to be published in the tariff.

- Tariff rates will no longer be required to be filed with the FMC but they must be publicly available and kept in electronic form to allow access by the FMC in an auditing process to ensure there is no deviation from that published tariff outside of registered service contract rates.

- Conferences may adopt voluntary guidelines applicable to individual service contracts.

b49. In September, 2001 the FMC issued a report on the impact of OSRA. In summary, the FMC concluded:

- The major regulatory changes made by OSRA were aimed at promoting a more market driven, efficient liner shipping industry. After two years of operations under this statute, indications are that it generally is achieving this objective.

- The liner shipping industry has been experiencing dynamic structural changes over the past several years. OSRA was enacted in full recognition of these changes, and has helped to foster their continuing evolution.

- Developments in US liner shipping in the past two years, while occurring in large measure due to the interplay of market forces, were impacted by the changed business environment brought about by OSRA.

- While there is not industry-wide consensus on most specific issues involving the impact of OSRA, this disparity of views has not had a major negative effect on business relationships or ongoing arrangements among industry participants.

- The FMC developed comprehensive regulations to implement OSRA, and has altered its approach to industry oversight to facilitate the attainment of OSRA's basic policy direction.

Overall there was an apparent widespread general satisfaction with the current US regulatory framework for ocean shipping under OSRA.

Canada

b50. The Shipping Conference Exemption Act, 1987 (SCEA) exempts inbound and outbound conferences from anti-trust legislation. It extends anti-trust protection to conference intermodal rate making but, in contrast to the US it places fewer administrative burdens on conference carriers who, although they must file their agreements, are not subject to a formal procedure after having done so.

b51. Transport Canada initiated a review of the Act in January 1999 in response to reviews and legislative changes to liner shipping conference legislation in the United States, Europe and Australia. Stakeholders across Canada were invited to provide comments on the Act and were subsequently asked to respond to a consultation paper containing a number of options for amending the Act. As a result of the consultation process, a number of amendments were proposed for adoption and accepted by the Canadian Government in March, 2001.

The amendments are as follows:

- Shipping conferences will be permitted to use electronic means to file conference documents (other than tariffs) with the Canadian Transportation Agency (CTA).
- Filing of conference tariffs with the CTA will be abolished.
- Shipping conferences will be required to provide electronic access to the public to their tariff information and other publicly accessible conference documents.
- The period by which an individual conference member must notify its other conference members of its intention to take independent action on rates and other service items will be reduced to five days from 15. Likewise, the publication requirement of such action will be reduced from 15 days to five. In both cases this will be established in the Act itself rather than by the governor-in-council as the Act currently provides.
- Individual conference members will be able to negotiate confidential service contracts on terms and conditions independent from those established by the conference.
- Individual conference members will not be obligated to provide notice to the other conference members or divulge any details of that service contract, and
- The fine for non-compliance with the Act will be raised from $1,000 per day to $10,000 per day.

It will be seen that the amended Act is not dissimilar to the OSRA in the USA.

Europe

b52. The trigger for an EU regulation was the adoption in 1979 of the so-called “Brussels package” which paved the way for the EU members to become party to the UN Code of the Conduct for Liner Conferences. The Brussels package included in the recitals to the agreement a clear recognition of the stabilising role of conferences and their other benefits, but balanced this with a request to the EU Commission to draft a competition

regulation for eventual adoption by the Council (ie. member States). In 1986 the EU introduced four regulations. Briefly the effects of these were:

a) Reg. 4005/86 applied the principle of freedom to provide shipping services between member States and third countries.

b) Reg. 4056/86 gave liner conference shipping an automatic exemption from the ban on restrictive business practices as embodied in the competition rules of the Treaty of Rome; subject to the conference members meeting certain specified requirements (similar to Part X)

c) Reg. 4058/86 safeguarded free access to cargoes in the international trades, and

d) Reg. 4057/86 dealt with unfair pricing practices.

b53. Members of conferences benefit from the block exemption from Article 85(1) of the Treaty of Rome provided that they respect the conditions and obligations provided for in the regulation. The condition is that a conference must not discriminate between ports and transport users by applying different rates and conditions or carriage to the same goods carried in the same area covered by the conference, unless such differences can be economically justified.

b54. The obligations include:

a) Consultations between conferences and transport users must take place whenever requested by either party on rates, conditions and quality of service

b) When freight charges do not cover inland transport and quayside services, a transport user must be free to select a transport undertaking of his own choice to carry out these operations

c) Tariffs must be made available on request at a reasonable cost to transport users.

b55. In many ways the EU regulation codifies the way in which conferences serving Europe already conduct their business. In other words, it endorsed the concept of self regulation as set out in the UN Liner Code. There are no requirements for filing rates or agreements (except if shipowners wish to apply for an individual exemption), and thus no administrative burden is placed on shipowners. Agreements can, however, be monitored by the Commission under Article 7 of Regulation 4056/86. In addition, the Commission may, either on its own initiative or on complaint, initiate procedures to terminate any infringement of Article 85(1).

b56. In February, 1992 the EU introduced Regulation 4079 on the application of Article 85(3) of the Treaty of Rome to apply to consortia. It is interesting to note the preamble to that Regulation which includes the following comments:

a) Whereas as joint-service agreements between liner shipping companies with the aim of rationalising the operations by means of technical, operational and/or commercial arrangements (described in shipping circles as consortia) can help to provide the necessary means for improving the productivity of liner shipping services and promoting technical and economic progress.

b) Having regard to the importance of maritime transport for the development of the community's trade and the role which consortia agreements can fulfil in this respect, taking account of the special features of international liner shipping.

c) Whereas the legalisation of these agreements is a measure which can make a positive contribution to improving the competitiveness of shipping in the community.

d) Whereas users of the shipping services offered by consortia can obtain a share of the benefits resulting from the improvements in productivity and service, by means of, inter-alia, regularity, cost reductions derived from higher levels of capacity utilisation, and better service quality stemming from improved vessels and equipment.

b57. These are clear objectives that can only be achieved by following the kind of regulatory approach inherent in Part X.

b58. In 1995, a new Regulation (870/95) setting out conditions for the automatic exemption for consortia; the distinction being drawn with Conferences that such Consortia Agreements must exclude price fixing.

b59. The block exemption for consortia was extended under Regulation 823/2000 for a further period of five years and it is again under review. A consultation document on the "Renewal of the exemption " has recently been released for comment. A number of issues and questions have arisen in the course of applying Regulation 823/2000 but it is considered that most likely the Commission will review the regulation possibly subject to some technical modifications to provide further clarity as to the application of this regulation. It is pointed out that once the ongoing review of Regulation 4056/86 is finalised, the Commission will have to substantially review the renewed Consortia Regulation.

b60. As mentioned above, the EU Commission is reviewing the block exemption and has issued a discussion paper earlier this year which concludes that the Conditions for a block exemption for liner shipping are no longer fulfilled. It also noted that there is not conclusive economic evidence that the exemption is still required.

b61. It is expected that it will be some time before the EU Commission finalises its deliberations and reports to Ministers. A white paper with concrete policy proposals is planned to be released in the European autumn this year.

<u>Japan</u>

b62. Japanese legislation under the Maintenance of Fair Trade Law No. 54 of 1947 governs the application of competition policy. Subsequently, the Maritime Transport Law provided an exemption for conferences under certain conditions.

b63. Agreements have to be filed with the Fair Trade Commission, which is entitled to raise objections, but there is no provision for formal approval after filing. The Maritime Transport Law governing filing does not explicitly limit its provisions to outbound or inbound traffic, but in reality only outbound traffic is affected as inbound conferences are not requested to file details. Tariffs have to be filed so that the authorities can check

that the prohibition of unduly discriminatory freight rates against certain shippers is upheld. There is no enforcement of tariff rates on file.

b64. Collective multimodal rate making covering inland transport in Japan is not exempted, but the nature of the industrial hinterland and its proximity to the many ports in Japan is such that this represents no difficulty in practice.

b65. Following a review, Japan decided to amend its marine Transportation Law to improve procedures for the examination of Carrier Agreements and passed into law in May 1999. The anti-trust immunity for such Carrier Agreements was preserved. Four criteria have been established for the examination of Agreements by the Transport Minister and Fair Trade Commission:

- user interests are not unduly impaired;
- no undue discrimination arises;
- participation in or withdrawal from the Agreement is not unduly restricted, and
- content of the Agreement is the minimum necessary to achieve its purpose.

b66. There was also an extension of powers for the Transport Minister to request not just Japanese shipping firms but also foreign shipping firms and non-Conference Lines, if need be, to report on details of their business such as freight rates and transport volumes and on-the-spot inspections can be conducted under the new law.

<u>Korea</u>

b67. The Korean maritime legislation was amended in 1996 and a block exemption was granted to Agreements notified to the Korean Maritime and Port Administration. The amendments included provisions relating to unfair pricing in Agreements and would only be accepted on the basis that Korean flag shipping was not hindered in its commercial operation. The Government could take action to suspend Agreements or seek to have their provisions altered. Importantly, shipper/carrier consultative committees will be authorised to exchange information and discuss service arrangements, but not freight rates. Filing of freight tariffs was required under the legislation.

b68. As outlined in the Issues Paper for this review, the Korean Government amended the Maritime Transport Act in 1999 which discontinued the rate filing system and introduced publication of freight rates on the internet. Only freight rates for major commodities are required to be published and the carrier is not required to update its published rate information unless the tariff changes by more than 20%. Both inward and outward Agreements are required to be filed.

New Zealand

b69. The Commerce Act, 1986 is New Zealand's primary competition law. It contains an exemption for conference bluewater services both inbound and outbound. The 1987 Shipping Act, however, sets out further details of New Zealand's shipping policy objectives *vis-à-vis* competition aspects making it clear that these centre on the outbound trades. Their Act, *inter-alia*, encourages consultations and negotiations between shippers and carriers, and allows the Minister of Transport to investigate any suspected unfair practices by carriers**.**

b70. Agreements and rates do not have to be filed or registered. The Commerce Act does not allow collective multimodal rate making to cover inland transport in New Zealand.

Peoples Republic of China (PRC)

b71. The PRC regulations governing competition in export liner trades may be described in the following regulations:

- **Article 20** of the Regulations stipulates that the freight rates of international shipping service operators and non-vessel-operating common carriers engaged in the business of international liner services shall be filed in specified format with the Ministry of Communications. The Ministry of Communications shall designate a special body for handling the filing of freight rates. The freight rates submitted for the filing shall include tariff rates and negotiated rates. Tariff rates refer to the freight rates shown in the tariff of international liner service operators and non-vessel-operating common carriers; while negotiated rates refer to the freight rates agreed upon between international liner service operators and shippers or non-vessel-operating common carriers. The tariff shall come into effect 30 days after the day upon which the tariff rates have been accepted for the filing by the Ministry of Communications. The negotiated rates shall come into effect 24 hours after acceptance for the filing by the Ministry of Communications. International liner service operators and non-vessel-operating common carriers shall implement the effective tariff rates that have been submitted for the filing. It has to be pointed out that this Article is not yet implemented because the Ministry of Communications have not yet established the detailed rules relating to the tariff rate and negotiated rate filing.

- **Article 22** of the Regulations stipulates that photocopies of liner conference agreements (both inward and outward), service operation agreements and freight rate agreements concluded between international shipping operators engaged in international liner services in which Chinese ports are involved shall be submitted to the Ministry of Communications within 15 days from the date on conclusion of such agreements. So there is a need to file the liner conference agreements, service operation and freight rate agreements although the Regulations do not include a requirement for minimum levels as applies in Australia.

- **Article 27** of "Regulations of the People's Republic of China on International Maritime Transportation" stipulates that none of the following acts may be committed in the operation of international shipping services or non-vessel-operating services:

a) providing service at lower freight rates than normal and reasonable ones, thereby prejudicing fair competition

b) offering secret rebates to shippers, not being reflected in the book-keeping, for the purpose of soliciting cargoes

c) arbitrarily taking advantage of its dominant position to impose discriminatory freight rates or other restrictive terms detrimental to the other party of the transaction; or

d) committing any other acts detrimental to the other party of the transaction or to the order of international liner shipping.

- **Article 35** stipulates that the Ministry of Communications of PRC may, upon the request of the interested parties or at its own discretion, conduct investigations into any act as specified in Article 27 of these regulations.

Hong Kong

b72. There is no legislation and there are no regulations in Hong Kong governing competition in the export liner trades for Hong Kong.

Taiwan

b73. The applicable laws pertaining to competition and relevant to the shipping industry are the Fair Trade Act (FTA) and the Shipping Enterprise Act (SEA). However, since the TFA and the SEA are relatively new, both the laws and their enforcement rules are not comprehensive, with scarce precedent or authority to rely on for statutory interpretation. In the event a question of interpretation or any other problems arise, the relevant authority often look to the legislation, practice and precedent of developed nations, mostly that of the USA, European Union, Canada and Japan. Sometimes they would refer to the precedents and legislation of Korea, it being a country that is in many ways similar to Taiwan. Agreements in both the inward and outward trades are required to be filed.

Note 1 to OECD Invisibles Code/Common Principles of Shipping Policy

b74. Note 1 to Annex A of the OECD Code of Liberalisation of Current Invisible Operations, amongst other matters, provides for the shipping policy of the Governments of the members to be based on the principle of free circulation of shipping in international trade in free and fair competition.

b75. In 1987 the Council of the OECD[15] adopted a recommendation of its Maritime Transport Committee concerning common principles of shipping policy for member countries, and recommended that they should endeavour in pursuance of their obligations under the Code, and when contemplating the introduction or amendment of new laws and regulations relating to shipping policy, ensure that they are in conformity with the following general principles and certain guidelines. Australia is a party to the following principles, which are considered highly relevant in consideration of this issue:

15 OECD Maritime Transport Review 1987.

- Principle 9 - Governmental Supervision of the Trade
  OECD Member governments acknowledge that in order to give full effect to international obligations which they assume in connection with other countries, their supervisory powers should, as far as possible, be harmonised on an OECD-wide basis.

- Principle 10 - The Role of Government and Competition Policy in Liner Shipping
  ...In determining how national competition policy should be applied in international shipping, it is essential for governments to give adequate consideration to the way their measures will affect the activities of foreign companies or might interfere with the competition policies and the interests of other OECD Member countries' governments.

- Principle 11 - The Relationship of Governments to the Activities of Shipping Lines and Conferences
  In determining what activities of shipping lines and conferences are desirable or undesirable, in accordance with the guidelines set out in Annex II to this Recommendation, governmental involvement should be directed towards the maintenance of a balance between the interests of shippers and shipowners, bearing in mind the repercussions on the end-users of the cargoes. If it appears that these interests and repercussions are not being sufficiently taken into account it is the responsibility of governments to redress the balance as appropriate. However, in doing so the normal commercial activities of shippers, shipowners and conferences should not be unduly impeded or distorted.

- Principle 12 - Avoidance and Resolution of Conflict in Matters of Competition Policy Concerning Shipping
  ...Because of its inherent character, international shipping will be particularly affected by conflicts of law and policy.

  When such conflicts emerge, or appear imminent to any party, either because of the enactment of new competition legislation affecting shipping, by modifications to existing legislation, or as a result of the application by a government or one of its agencies of existing laws or policy in a particular case, governments of Member countries should endeavour as appropriate and practicable to minimise these and arrive at mutually acceptable solutions through bilateral or multilateral consultations. Such consultations should be in accordance with mutually acceptable arrangements adopted on a bilateral or multilateral basis between Member countries.

b76. Observance of the above principles is regarded as extremely important in promoting international comity.

b77. These rules support the kind of comment that has been made by some academics in Europe; for example, Professor Sidney Gilman "My view is that in the present day the conference system simply reduces the severity of market instability and helps sustain large-scale commitments on the part of ocean carriers, whilst leaving ample scope for competition in open trades. I also believe that conferences make a valuable contribution

in providing the sophisticated and rationalised rating structures that the industry requires."[16]

b78. An OCED Maritime Transport Committee Survey in 1992 of the legal regimes and administrative procedures covering certain aspects of shipping found a general homogeneity among the laws and procedures of all the members of the Committee.[17]

16 An Economic Analysis of European Competition Law and Policy, p.16, Professor Sidney Gilman, September 1991.

17 OECD Maritime Transport Committee Survey of Legal Regimes and Administrative Procedures covering certain aspects of shipping "Evaluation of Answers to Questionnaire DSPI/SIATC(92)1".

SERVICES AND CAPACITY

Liner Abbreviations

ANL	ANL Container Line Limited, a subsidiary of CMA-CGM *(French)*
ANZDL	Australia New Zealand Direct Line, a division of CP Ships (UK) Ltd *(British)*
APL	American President Lines *(Singaporean)*
C&S	Lauritzen Cool and Seatrade Group *(Scandinavian)*
CMA CGM	Compagnie Maritime D'Affretement Compagnie Generale Maritime *(French)*
CHL	Consortium Hispania Lines *(Spanish)*
CONT	Contship Container Lines, a division of CP Ships (UK) Ltd *(British)*
COSCO	COSCO Container Lines *(Chinese)*
CSCL	China Shipping Container Lines Co Ltd *(Chinese)*
DJL	PT Djakarta Lloyd *(Indonesian)*
EVERGREEN	Evergreen Marine Corporation *(Taiwanese)*
FESCO	Far Eastern Shipping Company *(Russian)*
HAN	Hanjin Shipping *(Korea)*
HSUD	Hamburg Süd *(German)*
HL	Hapag Lloyd *(German)*
HYI	Hyundai Merchant Marine Co Ltd *(Korean)*
KKK	Kawasaki Kisen Kaisha *(Japanese)*
LT	Lloyd Triestino *(Italian)*
LYKES	Lykes Lines Limited LLC, a division of CP Ships (UK) Ltd *(United States)*
MAERSK	Maersk Sealand *(Danish)*
MAR	Compagnie Maritime Marfret *(French)*
MISC	Malaysian International Shipping Corp Berhad *(Malaysian)*
MOL	Mitsui OSK Lines *(Japanese)*
MSC	MSC Mediterranean Shipping Co SA *(Italian)*
NYK	Nippon Yusen Kabushiki Kaisha *(Japanese)*
OOCL	Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd *(Hong Kong)*
PIL	Pacific International Lines (Pte) Ltd *(Singaporean)*
PONL/POSCL	P&O Nedlloyd Limited, P&O Nedlloyd BV, P&O Swire Containers Ltd *(British/Dutch)*
RCL	RCL Feeder Private Ltd *(Singaporean)*
WWL	Wallenius Wilhelmsen Lines *(Norwegian)*
ZIM	ZIM Israel Navigation Co Ltd *(Israeli)*

Note: The italics is the nationality of the owners and not the flag of the registration of the vessel employed in the trade.

Consortia (excluding joint service arrangements)

Consortium	**Member Lines**
AAA	MISC/MOL/OOCL/PIL/ZIM/HYUNDAI
AANA	ANL/CSCL/OOCL
AAX	ANL/PONL/APL/NYK/DJL
ACE	CSCL/OOCL
ASA	HAN/LT/RCL/EVERGREEN
ACX	APL/PIL/ZIM
PIL/MISC	Servicing Brisbane only
NCA	EVERGREEN/HAN/HL
NEAX	KKK/MOL/NYK/POSCL
VSA	ANZDL/PONL/HSUD/MAERSK/FESCO/LYKES

North East Asia to East Coast Australia - Service and Supply Factors (Southbound), 2004

	AANA	ACE	NEAX	COSCO	NEAX/COSCO	MSL/MSC	NCA	ACX	FESCO/HMM/ HSDG	LYKES	Combined Service
Service	6 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	2 vessels fortnightly	48 vessels 494 voyages per annum
Transit time (RV)	42 days	35 days	35 days	35 days	35 days	35 days	35 days	35 days	35 days	27 days	
Ports	Yokohama Osaka Busan Qingdao Shanghai Ningbo Xiamen Hong Kong Kaohsiung Melbourne Sydney Brisbane	Kaohsiung Shanghai Chiwan Hong Kong Sydney Melbourne Brisbane	Yokohama Osaka Nagoya Busan Keelung Hong Kong Shekou Melbourne Sydney Brisbane	Shanghai Xiamen Huangpu Hong Kong Sydney Melbourne Brisbane	Dalian Qingdao Shanghai Ningbo Melbourne Sydney Brisbane	Yokohama Nagoya Osaka Busan Hong Kong Kaohsiung Sydney Melbourne Brisbane	Busan Shanghai Hong Kong Kaohsiung Sydney Melbourne Brisbane	Kaohsiung Shanghai Hong Kong Chiwan Melbourne Sydney Brisbane	Manila Kaohsiung Hong Kong Yantian Melbourne Sydney Brisbane	Yantian Xiamen Ningbo Shanghai Sydney Brisbane	Manila Yokohama Osaka Nagoya Busan Hong Kong Keelung Kaohsiung Chiwan Xiamen Huangpu Yantian Dalian Qingdao Shanghai Ningbo Sydney Melbourne Brisbane
Annual Capacity											
TEUs	131,560	131,560	124,800	88,500	58,760	135,928	57,200	78,000	55,120	35,100	896,528
Plugs	13,312	10,400	23,088	10,400	7,800	15,600	8,840	7,800	4,784	780	102,804

Note: Project Asia Service not included as it primarily represents a break bulk service with limited container capacity.

Legend:

AANA	ANL, CSCL, OOCL
ACE	CSCL, OOCL
NEAX	K LINE, MOL, NYK, P&O SWIRE
NCA	EVERGREEN, HANJIN, HAPAG LLOYD
ACX	APL, PIL, ZIM
AADA members	ANL, COSCON, CSCL, FESCO, HAMBURG SUD, HANJIN, HMM, K LINE, MAERSK SEALAND, MOL, MEDITERRANEAN SHIPPING CO, NYK, OOCL, P&O SWIRE AND ZIM.
ANZESC members	ANL, K LINE, MITSUI OSK, NYK, OOCL, P&O SWIRE AND ZIM.
Non AADA/Non ANZESC members	APL, EVERGREEN (Non-participating AADA member), HAPAG LLOYD, LYKES AND PIL

East Coast Australia to/from North East Asia - Direct Services and Supply Factors (Northbound/Southbound), 1999

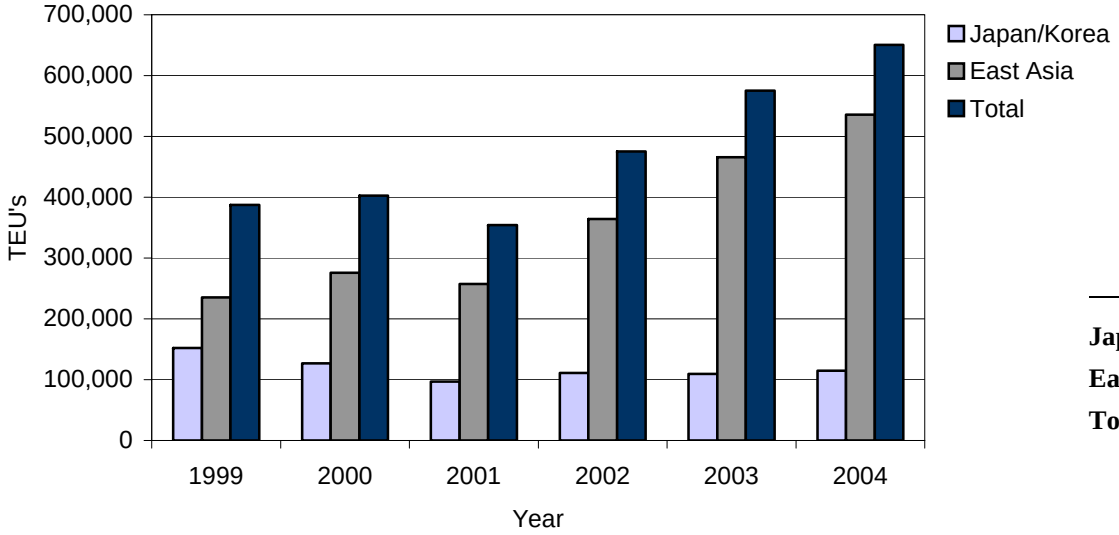
	Anscon/ANZESC			China Shipping Container	COSCON				Maersk/ Cho Yang/	Wallenius Wilhemsen	Combined
	Japan/Korea	East Asia	ASA	Line	Japan/Korea	East Asia	FESCO	MSC	Sealand	(1)	services
Service	5 vessels weekly	6 vessels weekly	5 vessels - weekly	7 vessels - weekly	6 vessels - weekly	6 vessels - weekly	5 vessels - weekly	6 vessels - weekly	5 vessels - weekly	9 vessels - Fortnightly	60 vessels - 494 voyages per annum
Transit time (RV)	35 days	42 days	35 days	49 days	42 days	42 days	35 days	42 days	35 days		
Ports	Melbourne Sydney Brisbane Yokohama Yokkaichi Nagoya Osaka Busan Melbourne	Sydney Melbourne Brisbane Hong Kong Kaohsiung Keelung Qingdao Shekou Keelung Sydney	Sydney Melbourne Brisbane Tokyo Osaka Busan Hong Kong Kaohsiung Sydney	Sydney Melbourne Brisbane Manila Hong Kong Shanghai Hakata Moji Shanghai Hong Kong Sydney	Sydney Brisbane Yokohama Kobe Busan Sydney	Sydney Melbourne Brisbane Manila Hong Kong Shanghai Huangpu Sydney	Melbourne Sydney Brisbane Manila Yantian Hong Kong Melbourne	Sydney Melbourne Brisbane Yokohama Osaka Busan Xingang Chiwan Hong Kong Sydney	Sydney Melbourne Brisbane Yokohama Osaka Nagoya Busan Kaohsiung Sydney	Brisbane Sydney Newcastle Melbourne Fremenatle Singapore Hong Kong Ningbo Qingdao Kobe Nagoya Yokohama Europe North America Melbourne	Sydney - Melbourne - Brisbane - Manila - Yokohama - Yokkaichi - Tokyo - Kobe - Osaka - Nagoya - Hakata - Moji - Busan - Hong Kong - Shekou - Keelung - Kaohsiung - Xingang - Chiwan - Huangpu - Yantian - Qingdao - Shanghai - Ningbo
Annual Capacity											
TEU's	112,441	112,320	59,737	52,000	46,920	68,640	65,728	73,684	86,944	51,768	730,182
Plugs	32,656	11,055	10,400	-	4,855	2,808	4,160	7,100	15,600	-	88,634

Notes: (1) Wallenius Wilhelmsen capacity was not exclusive to the North East Asia trades. Most space was allocated to cargoes transhipped or offered direct discharge to other trade areas.
(2) Spliethoff service not included as it primarily represented a break bulk service with limited container capacity.

Legend:

ASA	HANJIN, EVERGREEN ,RCL, LLOYD TRIESTINO
Anscon/ANZESC members:	ANL, BSL, CHO YANG, K LINE, MOL, NYK, OOCL, P&O SWIRE, YML, AND ZIM.
TFA members:	ANL, BLUE STAR, CHO YANG, K LINE, MAERSK, MOL, MSC, NYK, OOCL, SEALAND, P&O SWIRE, YML AND ZIM
All Lines Southbound meetings:	ANL, BLUE STAR, COSCON, CHO YANG, EVERGREEN, HANJIN, FESCO, K LINE, MAERSK, MOL, MSC, NYK, OOCL, P&O SWIRE, RCL, YML, AND ZIM
Non Agreement lines:	CSCL, MISC, LLOYD TRIESTINO AND WALLENIUS WILHELMSEN.

North East Asia to East Coast Australia, Import Volumes (TEU's)



	1999	2000	2001	2002	2003	2004
Japan/Korea	151,845	126,741	96,665	110,855	109,647	115,000
East Asia	235,400	275,959	257,481	364,208	465,876	535,750
Total	387,245	402,700	354,146	475,063	575,523	650,750

Notes: 1. Annual volumes for 2004 have been forecast allowing for an increase of approximately 5% for Japan/Korea and approximately 15% for East Asia on 2003 figures.
2. Volumes sourced from Australian port statistics.

North East Asia to West Coast Australia, Import Volumes (TEU's)

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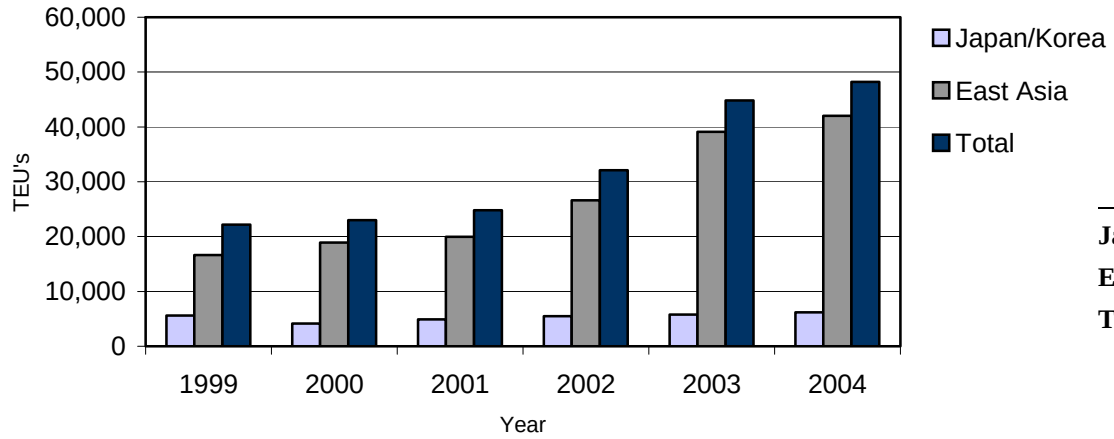
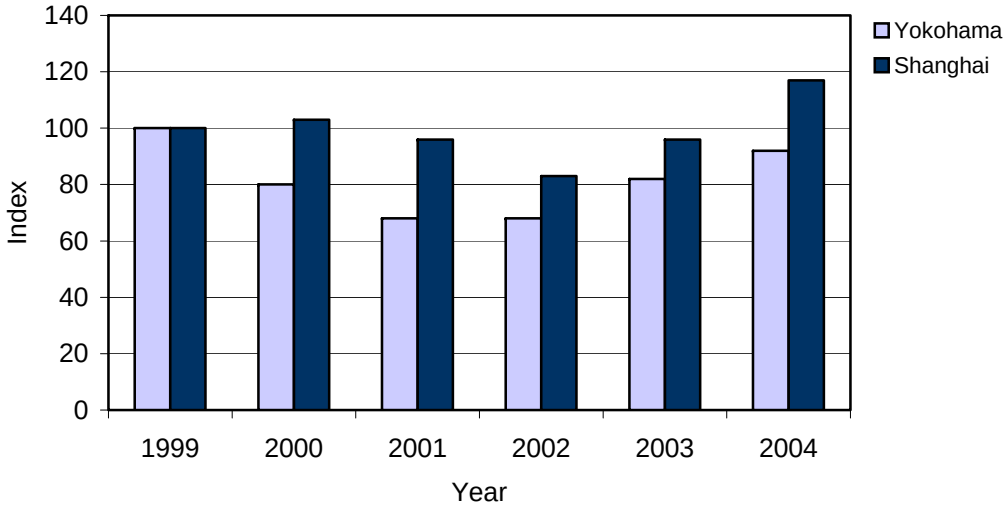


	1999	2000	2001	2002	2003	2004
Japan/Korea	5,587	4,117	4,883	5,499	5,764	6,200
East Asia	16,621	18,893	19,949	26,619	39,079	42,000
Total	22,208	23,010	24,832	32,118	44,843	48,200

Notes; (1) Volumes from North East Asia are transhipped over Singapore.
(2) Annual Import volumes for 2004 have been forecast allowing for approximately a 8% increase for Japan/Korea and approximately a 7.5% increase for East Asia.

North East Asia to East Coast Australia, General Cargo Ocean Rates of Freight



	1999	2000	2001	2002	2003	2004
Yokohama	100	80	68	68	82	92
Shanghai	100	103	96	83	96	117

Australia/North East Asia/Australia Trades, Entry and Exit of tonnage providers since 1999

Line	Date
APL	entered May 2004
Hamburg Sud	entered July 2002
Hapag Lloyd	entered May 2004
Hyundai Merchant Marine	entered December 2000
Lykes Lines	entered July 2004
PIL	entered May 2004
Blue Star Line	exited August 2000
Cho Yang Line	exited November 2000
Wallenius Wilhelmsen	exited November 2003
Yang Ming Line	exited October 2002

North East Asia to East Coast Australia, Commonly applied Surcharges and Additionals - 1999 verses 2004

Surcharge/Additional	1999	2004	Notes
CAF (Currency Adjustment Factor)	Japan: +15.0% East Asia: n/a	Japan: +17.5% East Asia: n/a	Applied to ANZESC tariff freight rates.
BAF (Bunker Adjustment Factor)	Japan: +0.50% East Asia: n/a	Japan: +5.0% East Asia: n/a	Applied to ANZESC tariff freight rates
EBS/BS (Emergency Bunker Surcharge/Bunker Surcharge)	Japan: n/a East Asia: US$50/teu	US$125/teu	Applies to non-tariff freight rates. Variations subject to feul prices varying by at least US$25/ton over 4 consecutive weekly reviews EBS of US$50/teu applied ex Japan from 1/1/2000.
OTHC (Origin Terminal Handling Charges)			
at Yokohama	n/a	Yen11,000/teu	As applied by ANZESC members for example.
at Shanghai	n/a	RMB 370/teu - dry RMB 410/teu - reefer	Introduced in January 2002
DTHC - *Melbourne*			
ex Yokohama	A$169/teu - dry	A$208/unit - dry	
	A$264/teu - reefer	A$300/unit - reefer	As applied by ANZESC members for example.
ex Shanghai	A$178/teu - dry	A$208/unit - dry	As applied by ANZESC members for example
	A$243/teu - reefer	A$300/unit - reefer	
PSC - *Melbourne*			
ex Yokohama	A$52.01/teu	A$31.40/teu	As applied by ANZESC members for example
ex Shanghai	A$50.88/teu	A$31.40/teu	As applied by ANZESC members for example
PSS (Peak Season Surcharge)	n/a	Japan - n/a East Asia - A$300/teu	Charge originally introduced in August 2003

East Coast Australia to North East Asia - Direct Services and Supply Factors (Northbound), 2004

	AANA	ACE	NEAX	COSCO	NEAX/COSCO	MSL/MSC	NCA	ACX	FESCO/HMM/ HSDG	LYKES	Combined services
Service	6 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	5 vessels weekly	2 vessels - fortnightly	48 vessels - 494 voyages per annum
Transit time (RV)	42 days	35 days	35 days	35 days	35 days	35 days	35 days	35 days	35 days	27 days	
Ports	Melbourne Sydney Brisbane Yokohama Osaka Busan Qingdao Shanghai Ningbo Xiamen Hong Kong Kaohsiung	Sydney Melbourne Brisbane Kaohsiung Hong Kong Shanghai Chiwan	Sydney Melbourne Brisbane Yokohama Osaka Nagoya Busan Keelung Hong Kong	Sydney Melbourne Brisbane Hong Kong Shanghai Xiamen Huangpu	Melbourne Sydney Brisbane Dalian Qingdao Shanghai Ningbo	Sydney Melbourne Brisbane Yokohama Nagoya Osaka Busan Hong Kong Kaohsiung	Sydney Melbourne Brisbane Busan Shanghai Hong Kong Kaohsiung	Melbourne Sydney Brisbane Kaohsiung Shanghai Hong Kong Chiwan	Melbourne Sydney Brisbane Manila Kaohsiung Hong Kong Yantian	Sydney Brisbane Yantian Xiamen Ningbo Shanghai	Sydney - Melbourne - Brisbane - Manila - Yokohama - Osaka - Nagoya - Busan – Hong Kong - Keelung - Kaohsiung - Chiwan - Xiamen - Huangpu - Yantian - Dalian - Qingdao - Shanghai - Ningbo
Annual Capacity											
dwt	1,573,000	1,456,000	1,670,240	1,069,588	705,120	1,244,880	800,000	1,219,712	744,120	526,500	11,009,160
TEU's	131,560	131,560	107,744	71,292	58,760	88,920	57,200	78,000	49,608	35,100	809,744
Plugs	13,312	10,400	23,088	10,400	7,800	15,600	8,840	7,800	4,784	7,800	109,804

Notes: Project Asia Service not included as it primarily operates a break bulk service with limited container capacity.

Legend:

AANA	ANL, CSCL, OOCL
ACE	CSCL, OOCL
ACX	APL, PIL, ZIM
NCA	EVERGREEN, HANJIN, HAPAG LLOYD
NEAX	K LINE, MOL, NYK, P&O SWIRE
TFA members:	ANL, COSCON, CSCL, FESCO, HAMBURG SUD, HMM, K LINE, MAERSK SEALAND, MOL, MEDITERRANEAN SHIPPING CO., NYK, OOCL, P&O SWIRE AND ZIM.
Anscon members:	ANL, K Line, MOL, NYK, OOCL, P&O SWIRE AND ZIM.
Non-TFA/Non-Anscon members:	APL, EVERGREEN, HAPAG LLOYD, HANJIN, LYKES AND PIL.

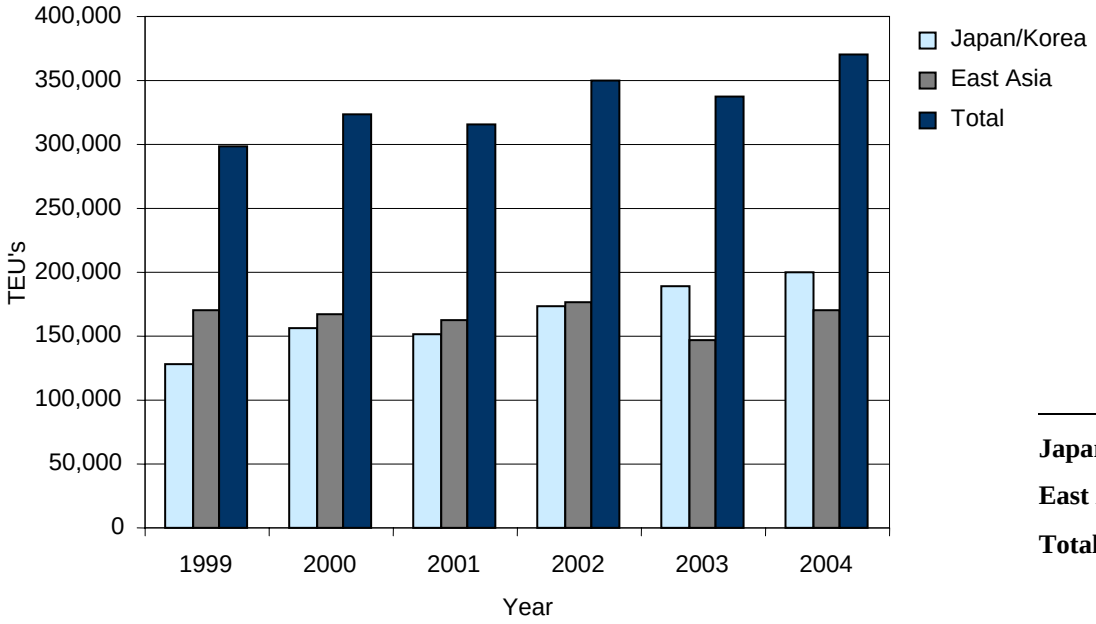
East Coast Australia to/from North East Asia - Direct Services and Supply Factors (Northbound/Southbound), 1999

	Anscon/ANZESC			China Shipping Container Line	COSCON				Wallenius Wilhemsen (1)	Combined services
	Japan/Korea	**East Asia**	**ASA**		**Japan/Korea**	**East Asia**	**FESCO**	**MSC**		
Service	5 vessels weekly	6 vessels weekly	5 vessels weekly	7 vessels weekly	6 vessels weekly	6 vessels weekly	5 vessels weekly	6 vessels weekly	9 vessels Fortnightly	60 vessels 494 voyages per annum
Transit time (RV)	35 days	42 days	35 days	49 days	42 days	42 days	35 days	42 days		
Ports	Melbourne Sydney Brisbane Yokohama Yokkaichi Nagoya Osaka Busan Melbourne	Sydney Melbourne Brisbane Hong Kong Kaohsiung Keelung Qingdao Shekou Keelung Sydney	Sydney Melbourne Brisbane Tokyo Osaka Busan Hong Kong Kaohsiung Sydney	Sydney Melbourne Brisbane Manila Hong Kong Shanghai Hakata Moji Shanghai Hong Kong Sydney	Sydney Brisbane okohama Kobe Busan Sydney	Sydney Melbourne Brisbane Manila Hong Kong Shanghai Huangpu Sydney	Melbourne Sydney Brisbane Manila Yantian Hong Kong Melbourne	Sydney Melbourne Brisbane Yokohama Osaka Nagoya Busan Kaohsiung Sydney	Brisbane Sydney Newcastle Melbourne Fremenatle Singapore Hong Kong Ningbo Qingdao Kobe Nagoya Yokohama Europe North America Melbourne	Sydney Melbourne Brisbane Manila Yokohama Yokkaichi Tokyo Kobe Osaka Nagoya Hakata Moji Busan Hong Kong Shekou Keelung Kaohsiung Xingang Chiwan Huangpu Yantian Qingdao Shanghai Ningbo
Annual Capacity										
TEU's	112,441	112,320	59,737	52,000	46,920	68,640	65,728	73,684	51,768	730,182
Plugs	32,656	11,055	10,400	-	4,855	2,808	4,160	7,100	-	88,634

Notes: (1) Wallenius Wilhelmsen capacity was not exclusive to the North East Asia trades. Most space was allocated to cargoes transhipped or offered direct discharge to other trade areas.
(2) Spliethoff service not included as it primarily represented a break bulk service with limited container capacity.

Legend: ASA HANJIN, EVERGREEN, RCL, LLOYD TRIESTINO
Anscon/ANZESC members: ANL, BSL, CHO YANG, K LINE, MOL, NYK, OOCL, P&O SWIRE, YML, AND ZIM
TFA members: ANL, Blue Star, CHO YANG, K LINE, MAERSK, MOL, MSC, NYK, OOCL, SEALAND, P&O SWIRE, YML AND ZIM
All Lines Southbound meetings: ANL, BLUE STAR, COSCON, CHO YANG, EVERGREEN, HANJIN, FESCO, K LINE, MAERSK, MOL, MSC, NYK, OOCL, P&O SWIRE, RCL, YML, AND ZIM
Non Agreement lines: CSCL, MISC, LLOYD TRIESTINO AND WALLENIUS WILHELMSEN.

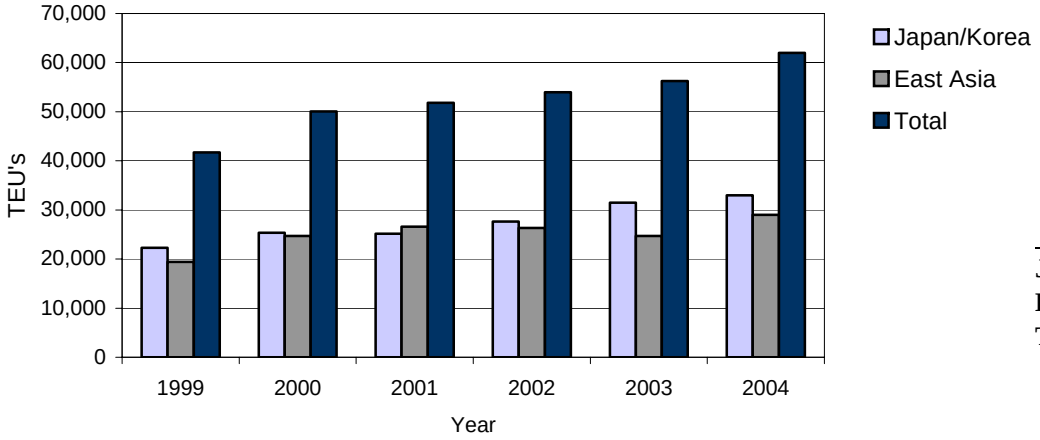
East Coast Australia to North East Asia, Export volumes (TEU's)



	1999	2000	2001	2002	2003	2004
Japan/Korea	127,498	156,051	152,159	172,816	189,688	200,000
East Asia	171,077	167,935	163,243	176,659	147,516	170,000
Total	298,575	323,986	315,402	349,475	337,204	370,000

Notes: (1) Annual volumes for 2004 have been forecast allowing for an increase of approximately 5% for Japan/Korea and approximately 15% for East Asia on 2003 figures.
(2) Volumes sourced from Australian port statistics.

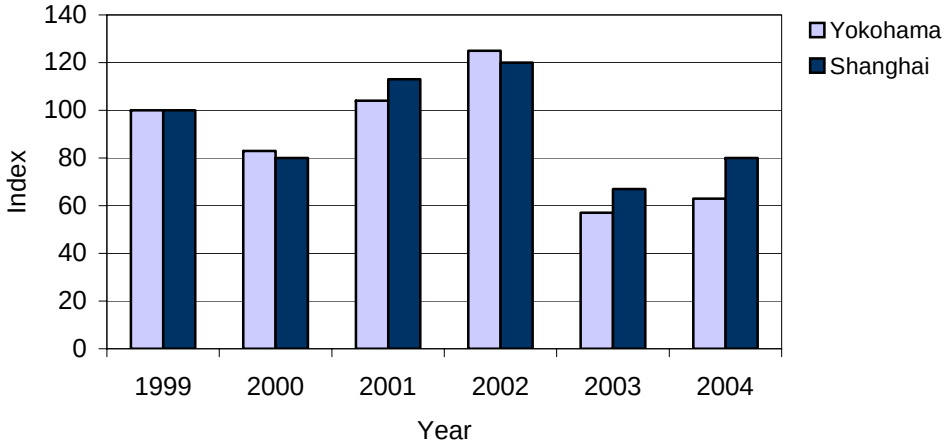
West Coast Australia to North East Asia, Export Volumes (TEU's)



	1999	2000	2001	2002	2003	2004
Japan/Korea	22,282	25,380	25,186	27,625	31,503	33,000
East Asia	19,451	24,674	26,605	26,320	24,726	29,000
Total	41,733	50,054	51,791	53,945	56,229	62,000

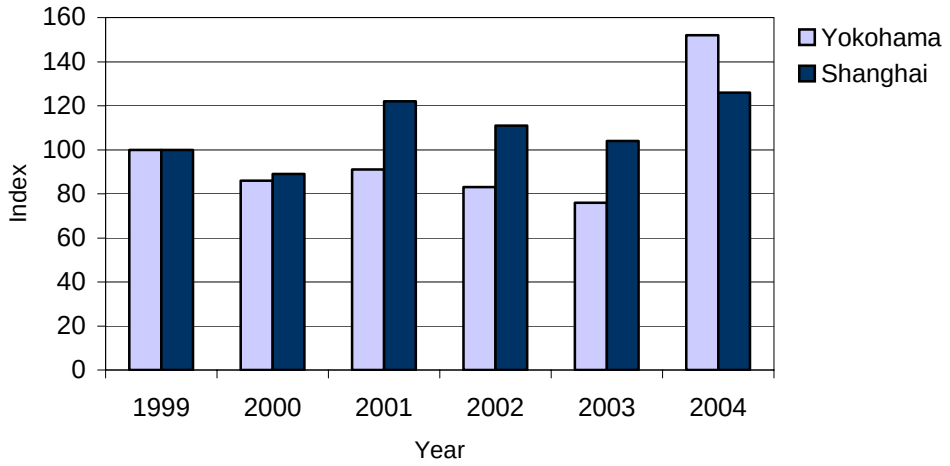
Notes: (1) Volumes to North East Asia are transhipped over Singapore.
(2) Annual export volumes for 2004 have been forecast allowing for approximately a 5% increase for Japan/Korea and approximately a 17.5% increase to East Asia.

East Coast Australia to North East Asia - Indexation of Ocean Rates of Freight, General Cargo Ocean Rates of Freight



	1999	2000	2001	2002	2003	2004
Yokohama	100	83	104	125	57	63
Shanghai	100	80	113	120	67	80

East Coast Australia to North East Asia - Indexation of Ocean Rates of Freight, Refrigerated Ocean Rates of Freight



	1999	2000	2001	2002	2003	2004
Yokohama	100	86	91	83	76	152
Shanghai	100	89	122	111	104	126

Entry and Exit of tonnage providers since 1999

Line	Date
APL	entered May 2004
Hapag Lloyd	entered May 2004
PIL	entered May 2004
Lykes Lines	entered July 2004
Hamburg Sud	entered July 2002
Hyundai Merchant Marine	entered December 2000
Blue Star Line	exited August 2000
Cho Yang Line	exited November 2000
Yang Ming Line	exited October 2002
Wallenius Wilhelmsen	exited November 2003

East Coast Australia to North East Asia, Commonly applied Surcharges and Additionals -1999 verses 2004

Surcharge/Additional	1999	2004	Notes
CABAF (Currency and Bunker Adjustment Factor)	Japan/Korea +16.50% East Asia +8.14%	n/a n/a	Applied to Anscon tariff rates. Withdrawn March '01 co-inciding with the adoption of US$ freight rates. The Cabaf prevailing at that time i.e. +26.61% and +28.61%, were respectively incorporated into Japan/Korea and East Asia tariff freight rates.
EBS/BS (Emergency Bunker Surcharge/Bunker Surcharge)	A$75/TEU	US$125/TEU	Applies to non-tariff freight rates. Variations subject to fuel prices varying by at least US$25/ton over 4 consecutive weekly reviews.
OTHC – Melbourne (Origin Terminal Handling Charge)	n/a n/a	A$170/unit - dry A$260/unit - reefer	As applied by Anscon members for example. Such charges were introduced in August 2000 on a revenue neutral basis.
DTHC (Destination Terminal Handling Charge)			
at Yokohama	Yen 17,450/TEU - dry Yen 21,942/TEU - reefer	Yen 17,450/TEU - dry Yen 21,942/TEU - reefer	
at Shanghai	n/a	RMB 370/TEU – dry RMB 410/TEU - reefer	DTHC's at Shanghai were applied from April 2002.
PSC – Melbourne (Port Service Charge)			
to Yokohama	A$44.01/TEU	A$31.40/TEU	
to Shanghai	A$42.88/TEU	A$31.40/TEU	
EHC (Equipment Handover Charge)	A$11/TEU*	A$30/TEU^	* As applied by Anscon members for example. ^ Typical of the level independently determined by carriers.
Documentation Fee	n/a	A$50/TEU	Typical agency charge independently determined by carriers.

South East Asia, Service and Supply Factors, 2004

TFG Services

	AAX	ASA	AAA	Maersk/K Line (West Coast)	PIL/MISC
Service	4 vessels - weekly	4 vessels - weekly	8 vessels - twice weekly	2 vessels - weekly	4 vessels - fortnightly
Transit time (RV)	28 days	28 days	28 days	14 days	35 days
Ports	Brisbane Sydney Melbourne Adelaide Fremantle Port Kelang Singapore** Brisbane	Brisbane Sydney Melbourne Singapore** Brisbane	Sydney Melbourne Bell Bay Adelaide Fremantle Port Kelang Singapore** Sydney	Fremantle Singapore** Fremantle	Brisbane Singapore** NZ Brisbane
Members	APL NYK P&O Nedlloyd ANL DJL	RCL Lloyd Triestino* Hanjin* Evergreen*	MISC MOL OOCL PIL Zim Hyundai	Maersk K Line	PIL MISC
Est. Annual allocated capacity (teus)	4,992 reefer 54,288 dry	8,861 reefer 23,163 dry	9,984 reefer 57,907 dry	6,240 reefer 40,160 dry	1,080 reefer 4,440 dry

* Not TFG Members.

Note: The average cargo deadweight varies between the Northbound and Southbound trades. Therefore the cargo capacities will differ between these trades.

**Cargo oncarried at Singapore to Indonesia, Thailand, Brunei, Cambodia, Vietnam and major markets outside of the region.

Non TFG Services

	AELA Westabout	MSC European service	MSCEast/North Asia service	ASA (Hanjin/Lloyd Triestino/Evergreen)	Swire	Wilhelmsen RoRo service
Services	12 vessels - weekly	15 vessels - weekly	6 vessels - weekly	8 vessels - twice weekly	4 vessels - fortnightly	9 vessels - fortnightly
Transit time (RV)	84 days	104 days	41 days	30 days	56 days	135 days
Ports	NZ Sydney Melbourne Adelaide Fremantle Singapore** Europe NZ Sydney	NZ Sydney Melbourne Adelaide Fremantle Singapore** Europe NZ Sydney	Singapore Fremantle Asia Fremantle	Brisbane Sydney Melbourne Singapore** Brisbane	Sydney Newcastle Brisbane Gladstone Townsville Darwin Jakarta Port Kelang Singapore Surabaya Sydney	Brisbane Sydney Melbourne Fremantle Singapore** Far East Nth America Europe NZ Brisbane
Est. total cargo capacity	17,400 reefer 57,500 dry	14,400 reefer 81,600 dry	information uknown	18,500 reefer 48,300 dry	information uknown	information uknown
Members	P&O Nedlloyd* CP Ships CMA CGM* Marfret Hapag-Lloyd Hamburg Sud CHL	MSC	MSC	Lloyd Triestino Hanjin Evergreen RCL**	NGPL	Wilhelmsen CP Ships
Notes	* Members of the TFG			** Member of the TFG.		

Note: The average cargo deadweight varies between the Northbound and Southbound trades. Therefore the cargo capacities will differ between these trades.

**Cargo oncarried at Singapore to Indonesia, Thailand, Brunei, Cambodia, Vietnam and major markets outside of the region.

South East Asia, Service and Supply Factors, 1999

TFG Services

	AAX	ASA	AAA	Maersk/K Line (West Coast)	PIL/MISC
Service	5 vessels - weekly	8 vessels - twice weekly	8 vessels - twice weekly	2 vessels - weekly	4 vessels - fortnightly
Transit time (RV)	37 days	30 days	30 days	14 days	56 days
Ports	Brisbane Sydney Melbourne Adelaide Fremantle Port Kelang Singapore** Brisbane	Brisbane Sydney Melbourne Singapore** Brisbane	Sydney Melbourne Bell Bay Burnie Adelaide Fremantle Port Kelang Singapore** Sydney	Fremantle Singapore** Fremantle	Brisbane Singapore** NZ Brisbane
Members	APL NYK P&O Nedlloyd ANL DJL	RCL Lloyd Triestino Hanjin Evergreen	MISC MOL OOCL PIL Zim Hyundai	Maersk K Line	PIL MISC
Est. Annual allocated capacity (teus)	5,316 reefer 47,124 dry	4,032 reefer 15,252 dry	9,684 reefer 46,775 dry	5,142 reefer 13,778 dry	2,016 reefer 9,181 dry

Note: The average cargo deadweight varies between the Northbound and Southbound trades. Therefore the cargo capacities will differ between these trades.
** cargo oncarried at Singapore to Indonesia, Thailand, Brunei, Cambodia, Vietnam and major markets outside of the region.

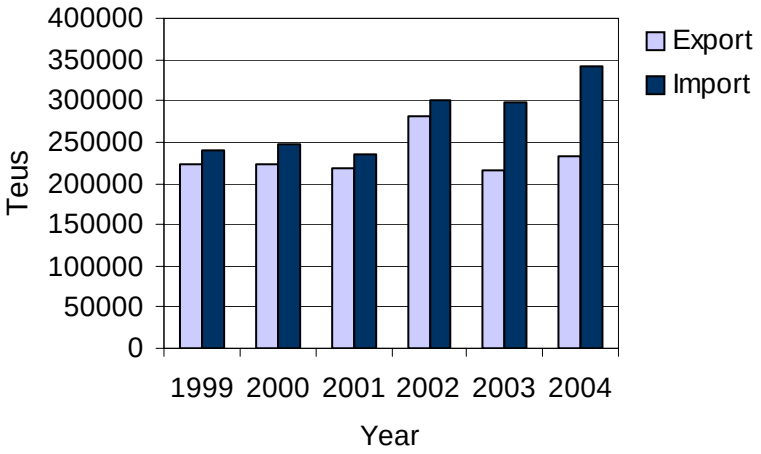
South East Asia, Service and Supply Factors, 1999

Non TFG Services

	AELA Eagle	AELA Mediterranean	AELA Round the World	Wilhelmsen RoRo service
Services	6 vessels- fortnightly	5 vessels- fortnightly	8 vessels- every 10 days	9 vessels- fortnightly
Transit time (RV)	84 days	70 days	84 days	135 days
Ports	Sydney Melbourne Adelaide Fremantle Singapore** Europe Fremantle Adelaide Melbourne Sydney	Sydney Melbourne Fremantle Singapore** Europe Fremantle Melbourne Sydney	Brisbane Sydney Melbourne Singapore** Europe NZ Brisbane	Brisbane Sydney Melbourne Fremantle Singapore** Far East Nth America Europe NZ Brisbane
Est. total cargo capacity	8,800 reefer 58, 500 dry	8,700 reefer 41,400 dry	9,600 reefer 60,800 dry	3,800 reefer 48,600 dry
Members	P&O Nedlloyd* Contship CMA CGM* Marfret Hapag-Lloyd CHL Wilhelmsen	P&O Nedlloyd* Contship CMA CGM* Marfret Hapag-Lloyd CHL Wilhelmsen	P&O Nedlloyd* Contship CMA CGM* Marfret Hapag-Lloyd CHL Wilhelmsen	P&O Nedlloyd* Contship CMA CGM* Marfret Hapag-Lloyd CHL Wilhelmsen

Note: The annual cargo capacities are not dedicated to the Australia/South East Asia Trade. Cargo for other trades is carried on these services.
* P&ONL and CMA CGM (through ANL) are also Members of the TFG

South East Asia Service, Export/Import Volumes (TEUs)

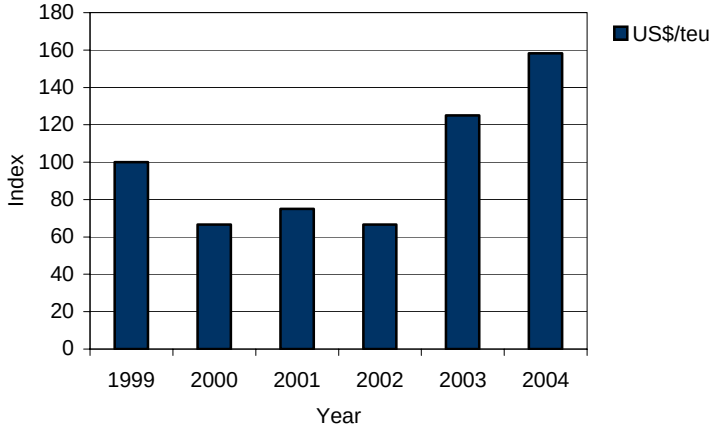


	1999	2000	2001	2002	2003	2004
Export	222430	223050	218663	281892	215351	232579
Import	239691	247273	234021	300642	297529	342158

Source: Australian Port Statistics

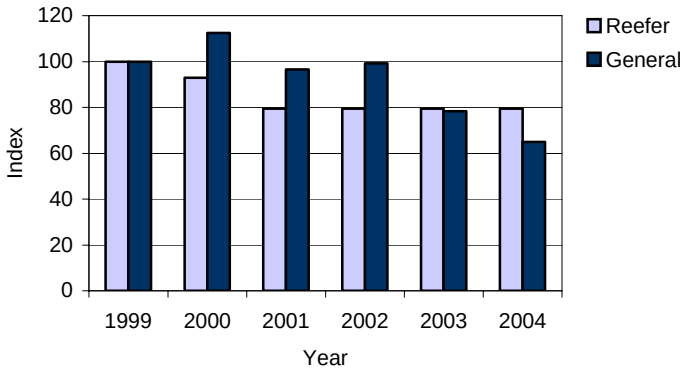
South East Asia Service, Indexed Average Market Blue Water Rates Per TEU Ex Singapore/Pt Kelang

Southbound



	1999	2000	2001	2002	2003	2004
General	100	67	75	67	125	158

Northbound



	1999	2000	2001	2002	2003	2004
Reefer	100	93	79	79	79	79
General	100	113	97	99	78	65

South East Asia Service, Current Surcharges & Additionals In Melbourne & Singapore

Surcharges & Additionals	Northbound	Southbound
Bunker Surcharge	US$40 per 20ft US$70 per 40ft	US$165 per teu
PSCs – Port Service Charges	Melbourne: A$31.40 per 20ft A$52.40 per 40ft	Singapore: Not applicable
THCs – Terminal Handling Charges	Melbourne: A$260 per unit for reefer A$170 per unit for general cargo	Singapore: Determined by each Member
EHCs – Equipment Handover Charges	Melbourne: A$30 per 20ft A$35 per 40ft	Singapore: Not applicable
Documentation Fee	A$45 per bill of lading	Determined by each Member
DTHCs – Destination Terminal Handling Charges	Singapore: S$182 per 20ft S$270 per 40ft	Melbourne: Determined by each Member
PSS – Peak Season Surcharge	Not applicable	US$300 per teu

Background history

Northbound Bunker surcharge: this surcharge triggers when the weekly calculation results in a +/-US$25 per tonne variation or more from the base price over five successive weeks. The movement of this surcharge in recent years has been as follows:

	US$/20ft	US$/40ft
17 June, 2002	20	35
6 March, 2003	45	75
26 June, 2003	20	35
24 June, 2004	40	70

Australian THCs: the level of these charges has not altered since their introduction from 1 August, 2000.

Southbound Bunker surcharge:

	US$/teu
1 October, 2000	125
1 April, 2002	85
1 July, 2002	110
1 October, 2002	135
10 March, 2003	185
10 May, 2003	140
1 July, 2004	165

Equipment Handover Charge (EHC) and Documentation Fee – the above charges represent the average charged by Member Lines. These charges are not collectively agreed under Part X.

Hazardous cargo and hi-cube containers – in addition to the above surcharges and additionals, Members charge additionals on shipments of hazardous cargo and shipments packed into hi-cube containers.

North America - Service and Supply Factors (Southbound and Northbound), 2004

	AUSCLA			ACCLA	AUSDA	ACDA	AMDA	AFDA	MSL ECUSA	US OVSA	Other T/S Services	USADA
	WCUSA - PNW	**WCUSA - PSW**	**ECUSA**	**WCCA & ECCAN**	**WCNA & ECNA**	**WCCA & ECCAN**	**Mexico**	**Fiji**	**ECUSA**	**WC Nth America**	**WCNA + some ECNA**	**WCUSA & ECUSA**
Agreement Type & Inward or Outward	Conference Outward			Conference Outward	Discussion Agreement Outward	Discussion Agreement Outward	Discussion Agreement Outward	Discussion Agreement Outward	Independent Carrier	Consortia Agreement Outward & Inward	Independent Carriers	Discussion Agreement Inward
Transit time	49 days (Round voyage)	42 days (Round voyage)	28 days (Syd - PHL)	22 days approx. (Melb/Syd - VCR)	**WC** - 48 days round trip. **EC** - 26-28 days EC Aust to ECUSA	22 days approx. (Melb/Syd - VCR)	30 days approx (Melb/Syd to Manzanillo)	10 days	24 days	41 to 49 days round trip depending on loop/string		**WCUSA** - 19 days **ECUSA** - 24 - 31 days
Service	7 vessels - one per week	6 vessels - one per week	10 vessels - one per week	**WCCAN** 7 vessels - one per fortnight **ECCAN** via PHL	**(1)** 27 vessels - 182 Sailings PA. **(2)** weekly MSL feeder service from Fremantle to Tanjung Pelapas and Singapore. **(3)** 9-10 conventional reefer vessels ex Nth Qld to **ECUSA** in main meat season.	**WCCAN** 7 vessels - one per fortnight **ECCAN** via PHL	**WC** - 13 vessels to LAX with weekly feeder to WC Mexico. **EC** - 10 vessels to Manzanillo (Panama) with feeder to EC Mexico	6 Vessels - one per fortnight	4 vessels - one per fortnight	13 vessels - twice weekly	See below	**WCUSA** - 13 vessels in 2 loops. 2 sailings per week. **ECUSA** - 16 vessels in 2 separate services with 7 to 14 day sailing frequency.
Service Notes	Dedicated vessels/space shared by all member Lines		10 x 4100 TEU vessels incl.1300 reefer slots. ECNA served as part of Eastbound RTW service. Space shared by all member Lines.	**WCCAN** - Dedicated vessels. **ECCAN** - cargo on Eastbound RTW vessels via PHL	Mix of dedicated and RTW vessels	**WCCAN** Dedicated vessels. **ECCAN** cargo on Eastbound RTW vessels via PHL	**WC** Dedicated vessels. **EC** cargo on Eastbound RTW vessels via PHL	3 Lines share 4 vessels/space other 2 Lines share 2 vessels/space	Dedicated vessels	Dedicated vessels/space shared by all member Lines	17 shipping lines carry cargo to Nth America via NE Asia, Sth Africa or Europe	**WCUSA** - 624 annual port calls. **ECUSA** - 520 annual port calls. Cargo ex WC & EC Canada carried on these vessels also.

	WCUSA - PNW	AUSCLA WCUSA - PSW	ECUSA	ACCLA WCCA & ECCAN	AUSDA WCNA & ECNA	ACDA WCCA & ECCAN	AMDA Mexico	AFDA Fiji	MSL ECUSA ECUSA	US OVSA WC Nth America	Other T/S Services WCNA + some ECNA	USADA WCUSA & ECUSA
Ports	Melbourne Sydney Papeete Honolulu Oakland Seattle Los Angeles and return to Australia	Melbourne Sydney Suva Oakland Vancouver Los Angeles and return to Australia	Melbourne Sydney Brisbane Panama Savannah Philadelphia (thence Europe and return to Australia via Suez Canal)	Melbourne Sydney Vancouver and return to Australia	Melbourne Sydney Tauranga Papeete Suva Honolulu Oakland Vancouver Seattle Los Angeles Panama Savannah Philadelphia	Melbourne Sydney Vancouver and return to Australia	**WC** - Melbourne Sydney Los Angeles thence feeder to WC Mexico. **EC** - Melbourne Sydney Brisbane Manzanillo (Panama) thence feeder to Vera Cruz	3 Lines Melbourne Sydney to Suva en route to Nth America. 2 Lines Melb/Syd/Bris to Suva direct.	Sydney Melbourne Brisbane Philadelphia Savannah and return to Australia	Melbourne Sydney Suva Tahiti Honolulu Vancouver Los Angeles Oakland Seattle and return.	Various ports in Asia Europe and Sth Africa to both WC & EC Nth America	**WCUSA** - Los Angeles Oakland Seattle Sydney Melbourne **ECUSA** New York Philadelphia Norfolk Savannah Sydney Melbourne Adelaide Fremantle
Space Allocation												
dwt (tonnes)		42,930		4,200	59,777		2,190	6,789	15,376	48,857	About 11% of Aust Export cargo carried in 2003/04	2,125,000
TEUs Dry		34,570		2,870	69,740		2,555	6,730	11,440	44,800		119,670
Plugs		15,515		2,030				1,190	6,500	12,200		27,830

Notes: Transit days are approximate because calls at Sydney and Melbourne may alternate and some discharge ports are served by more than one service rotation.

Legend:

AUSCLA	Australia - United States Containerline Association
ACCLA	Australia - Canada Container Line Association
AUSDA	Australia - United States Discussion Agreement
ACDA	Australia - Canada Discussion Agreement
AMDA	Australia - Mexico Discussion Agreement
AFDA	Australia - Fiji Discussion Agreement
US OVSA	US Pacific Coast - Oceania Vessel Sharing Agreement
USADA	United States - Australia Discussion Agreement
MSL	Maersk Sealand - independent carrier to/from East Coast USA
LAX	Los Angeles, LA.
PHL	Philadelphia, PA.
VCR	Vancouver, BC
Dedicated	Dedicated to Nth America Trade
RTW	Round the World

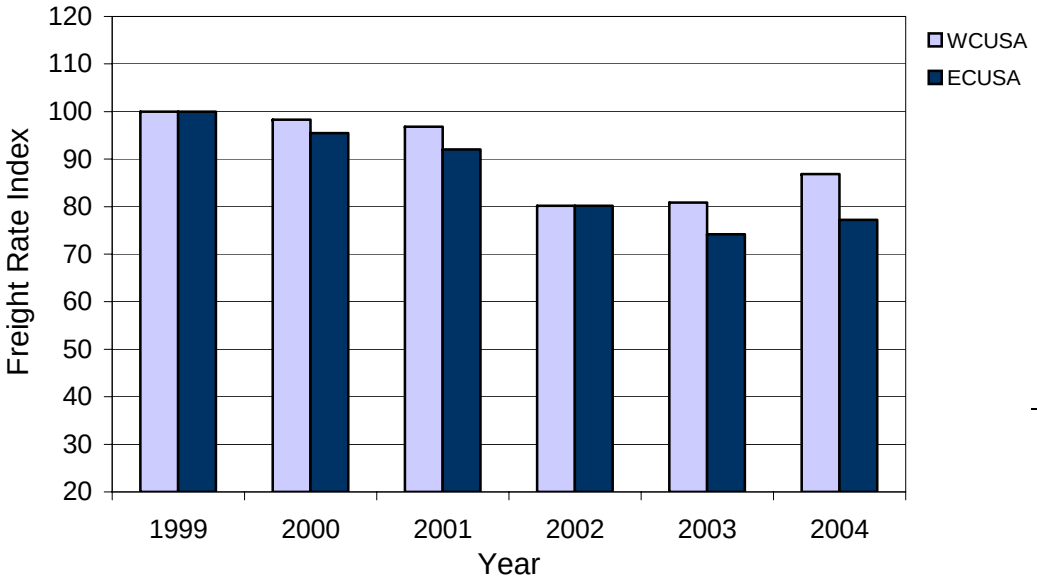
North America - Service and Supply Factors (Southbound and Northbound), 1999

	AUSCLA		ACCLA	AUSDA	ACDA	AMDA	AFDA	MSL ECUSA	US OVSA	Other T/S Services	USADA
	WCUSA	**ECUSA**	**WCCA & ECCAN**	**WCUSA & ECUSA**	**WCCA & ECCAN**	**Mexico**	**Fiji**	**ECUSA**	**WC Nth America**	**WCNA + some ECNA**	**WCUSA & ECUSA**
Agreement Type & Inward or Outward	Conference Outward		Conference Outward	Discussion Agreement Outward	Conference Outward	Discussion Agreement Outward	Agreement did not exist in 1999		Agreement did not exist in 1999	Independent Carriers	Titled ICCDA in 1999 - Discussion Agreement Inward. First filed 2001
Service	14 vessels - one per week	10 vessels - one per 9 days	Via USA	**WCUSA** - 21 vessels **ECUSA** - 10 vessels	Via USA	Served by feeder vessels via LAX		Service did not exist in 1999		See below	
Transit time	25 days to LAX	34 days (Syd - PHL)	**WCCAN** - 26 days to Vancouver **ECCAN** - 38days to Toronto	**WC** - 25-30 days. **EC** - 34 days to PHL	**WCCAN** - 26 days to Vancouver **ECCAN** - 38days to Toronto	30 days approx (Melb/Syd to Manzanillo)					**WCUSA** - 21 - 26 days **ECUSA** - 26 - 33 days.
Service Notes	3 Lines with dedicated vessels. Vessels/space shared by 2 Lines, 3rd Line space not shared. Some cargo overlanded to ECUSA	2 Lines - Dedicated vessels/space shared by both Lines	**WCCAN** by feeder vessel from LAX **ECCAN** by rail from PHL	Service comprised many small/medium sized dedicated vessels	**WCCAN** by feeder vessel from LAX **ECCAN** by rail from PHL	3 Lines with dedicated vessels. Vessels/space shared by 2 Lines, 3rd Line space not shared. Mexico cargo by feeder service ex these vessels.				Transhipment carriers to Nth America via NE Asia, Sth Africa or Europe - No. not known but understood to be many less than in 2004.	**WCUSA** - 22 vessels in 3 separate services with weekly sailings **ECUSA** - 25 vessels in 3 separate services with 8 - 10 day frequency.
Ports	Melbourne Sydney Fiji Tahiti Honolulu Los Angeles San Francisco and return to Australia	Melbourne Sydney Brisbane Savannah Philadelphia Norfolk Houston and return to Australia	No direct Canadian Ports	Melbourne Sydney Honolulu San Francisco Seattle Los Angeles Philadelphia Norfolk Houston Jacksonville	No direct Canadian Ports	**WC** - Melbourne Sydney Los Angeles thence feeder to WC Mexico.					**WCUSA** - Los Angeles Oakland Seattle Sydney Melbourne **ECUSA** - New York Philadelphia Norfolk Savannah Brisbane Sydney Melbourne
Space Allocation											
dwt (tonnes)	15884		986	14318	986	943	7226	N/A	N/A	N/A	2471360
TEUs Dry	24620		1800	32450	1800	1100	7170				135910
Plugs	16480		1000	14000	1000		1260				36230

Notes: Transit days are approximate because calls at Sydney and Brisbane and Melbourne may alternate and some discharge ports are served by more than one service rotation.
Also, not all ports are served by all Lines.

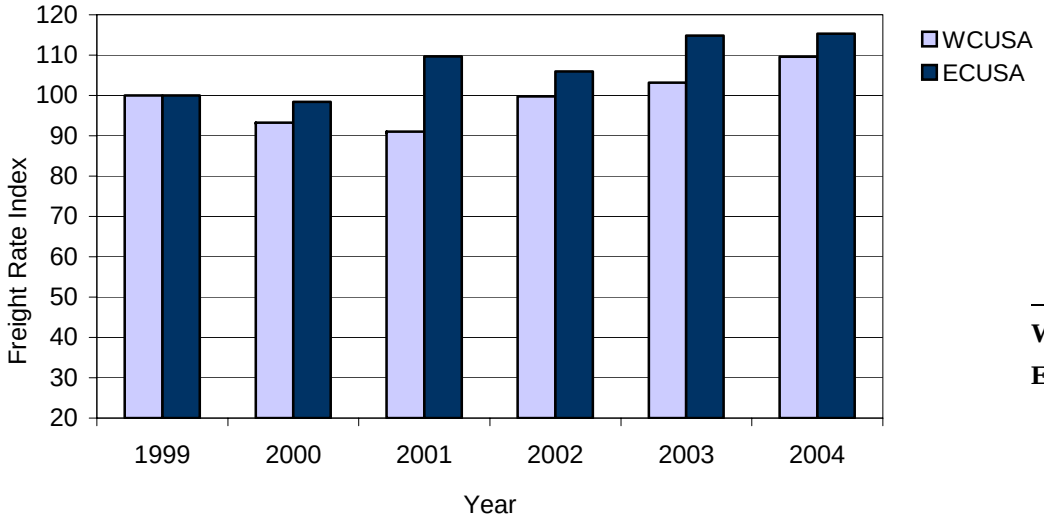
Legend:		
	AUSCLA	Australia - United States Containerline Association
	ACCLA	Australia - Canada Container Line Association
	AUSDA	Australia - United States Discussion Agreement
	ACDA	Australia - Canada Discussion Agreement
	AMDA	Australia - Mexico Discussion Agreement
	US OVSA	US Pacific Coast - Oceania Vessel Sharing Agreement
	USADA	United States - Australia Discussion Agreement
	MSL	Maersk Sealand - independent carrier to East Coast USA
	LAX	Los Angeles, LA.
	PHL	Philadelphia, PA.
	DEDICATED	Dedicated to named trade
	ICCDA	US Interconference and Carrier Discussion Agreement

North America, USA/Australia - Import Dry Cargo - Index of Average Market Blue Water Rates



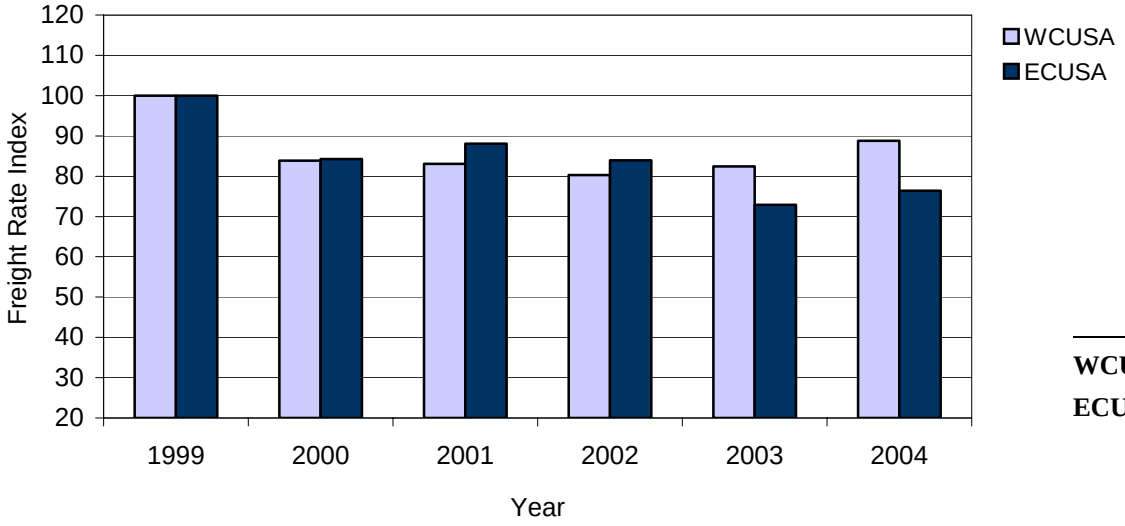
	1999	2000	2001	2002	2003	2004
WCUSA	100	98	97	80	81	87
ECUSA	100	95	92	80	74	77

North America, Australia/USA - Export Dry Cargo - Index of Average Market Blue Water Rates



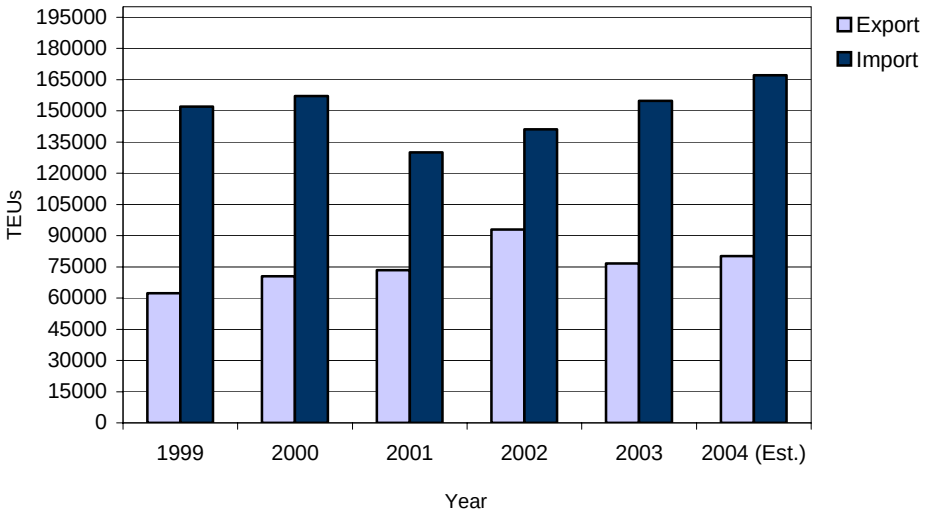
	1999	2000	2001	2002	2003	2004
WCUSA	100	93	91	100	103	110
ECUSA	100	98	110	106	115	115

North America, Australia/USA - Export Refrigerated Cargo - Index of Average Market Blue Water Rates



	1999	2000	2001	2002	2003	2004
WCUSA	100	84	83	80	82	89
ECUSA	100	84	88	84	73	76

North America, Australia/USA, Total of Full TEU's Shipping to North America 1999-2003



	1999	2000	2001	2002	2003	2004 (Est.)
Export	62329	70458	73381	92912	76578	80100
Import	152041	157058	129995	141148	154762	167150

Source: Australian Port Authorities - Year Ended 31 December

North America to Australia Trade (Southbound), Commonly Applied Surcharges and Additionals, July 2004

Important In the inward trade from North America, Surcharges and Additionals are set by each Line individually. The rates below are an indication of the prevailing rates and certainly do not represent the rates charged by each Line individually. Also, it is likely that not every Line charges every surcharge or additional listed below.

Surcharge/Additional	WCNA	ECNA
EFAF Emergency Fuel Adjustment Factor	US$130/TEU	US$130/TEU
Terminal Receiving Charge	USA: US$420/20ft & US$650/40ft Canada: US$390/20ft & US$620/40ft	USA: US$420/20ft & US$650/40ft Canada: US$390/20ft & US$620/40ft
Equipment Imbalance Surcharge	US$420/20ft & US$650/40ft	US$200/20ft & US$350/40ft
Chassis Usage Fee	US$40/chassis	US$40/chassis
Panama Canal Surcharge	N/A	US$40/container
APCA Australian Port Charge Additional (Port Service Charge in other trades)	Dry Cargo - A$263/20ft & A$314/40ft Refrig Cargo – A$368/20ft & A$428/40ft	Dry Cargo - A$263/20ft & A$314/40ft Refrig Cargo – A$368/20ft & A$428/40ft
Alameda Corridor Surcharge	US$16/20ft & US$31/40ft	
Documentation Fee	Origin: A$15/Container Destination: US$25/ Bill of lading	Origin: A$15/Container Destination: US$25/ Bill of lading
Special Equipment Charges	US$350/20ft & US$650/40ft	US$350/20ft & US$650/40ft
Hi-cube Container Surcharge (Dry cargo only)	US$125/TEU	US$125/TEU

Australia to North America Trade (Northbound) Commonly Applied Surcharges and Additionals - 1999 - 2004

Surcharge/Additional	1999	2004	Notes
EBS (Emerency Bunker Surcharge)		US$180/TEU	Applicable to commodities other than meat. Variation subject to bunker prices varying by US$25/tonne for five consecutive weeks. (Commenced Oct 2002)
EBAF (Emergency Bunker Adjustment Factor)		US$211/TEU	Applicable to meat only. Subject to bunker prices varying by =+/- 10%. (Commenced Jan 2000)
DTHC - WCUSA (Destination Terminal Handling Charge)	US$290/20ft US$580/40ft	US$290/20ft US$580/40ft (Unchanged since Nov 2000)	
DTHC - ECUSA (Destination Terminal Handling Charge)	US$290/20ft US$580/40ft	US$420/20ft US$620/40ft (Unchanged since 1 Nov 2000)	
OTHC (Origin Terminal Handling Charge)	A$170/ dry container A$290/ refrig container (Commenced from Aug 2001)	A$175/ dry container A$355/ refrig container	
APCA (Australian Port Charge Additional (Port Service Charge in other trades))	Melbourne: A$48.13/20ft A$96.26/40ft Sydney: A$46.43/20ft A$92.96/40ft	Melbourne: A$31.40/20ft A$52.50/40ft Sydney: A$45.00/20ft A$90.00/40ft (Unchanged since Aug 1999)	
CABAF (Currency Adjustment Factor/Bunker Adjustment Factor)	11.19% Discontinued from October 2001		
US Customs 24 Hour Advance Manifest Charge		US$25/bill of lading	These rates set independently by Lines. (Commenced March/April 2003)
Documentation Fee		US$35 – US$50/bill of lading	These rates set independently by Lines. (Commenced March/April 2003)

Europe Services – Service and Supply Factors, 2004

AELA Services

	Eastabout	Westabout
Services	10 vessels - weekly	12 vessels - weekly
Transit time (RV)	70 days	84 days
Ports	Melbourne	Sydney
	Sydney	Melbourne
	Brisbane	Adelaide
	Zeebrugge	Fremantle
	Tilbury	Jeddah
	Hamburg	Damietta
	Rotterdam	Marsaxlokk
	La Spezia	La Spezia
	Melbourne	Tilbury
		Hamburg
		Rotterdam
		Le Havre
		NZ
		Sydney
Members	P&O Nedlloyd	P&O Nedlloyd
	CP Ships	CP Ships
	CMA CGM	CMA CGM
	Marfret	Marfret
	Hapag-Lloyd	Hapag-Lloyd
	Hamburg Sud	Hamburg Sud
	CHL	CHL
Est. Annual allocated capacity (teus)	2,579 reefer 16,141 dry	7,389 reefer 34,964 dry

Non AELA Services

	MSC	AAX	ASA	AAA	Maersk/K Line (West Coast)	PIL/MISC	Maersk - East Coast
Service	15 vessels - every 6 days	4 vessels - weekly	4 vessels - weekly	8 vessels - twice weekly	2 vessels - weekly	4 vessels - fortnightly	5 vessels - weekly
Transit time (RV)	90 days	28 days	28 days	28 days	14 days	60 days	35 day
Ports	NZ	Brisbane	Brisbane	Sydney	Fremantle	Brisbane	Sydney
	Sydney	Sydney	Sydney	Melbourne	Singapore**	Singapore**	Melbourne
	Melbourne	Melbourne	Melbourne	Bell Bay	Fremantle	NZ	Brisbane
	Adelaide	Adelaide	Singapore**	Burnie		Brisbane	Yokohama*
	Fremantle	Fremantle	Brisbane	Adelaide			Nagoya
	Jeddah	Port Kelang		Fremantle			Osaka
	La Spezia	Singapore**		Port Kelang			Busan
	Antwerp	Brisbane		Singapore**			Hong Kong
	Felixstowe			Sydney			Koahsiung
	Le Havre						Sydney
	Valencia						
	La Spezia						
	Fos						
	Fremantle						
Members	MSC	APL	RCL	MISC	Maersk	PIL	Maersk
		NYK	Lloyd Triestino*	MOL	K Line	MISC	
		P&O Nedlloyd*	Hanjin*	OOCL			
		ANL*	Evergreen*	PIL			
		DJL		Zim			
				Hyundai			
Est. total cargo capacity	12,600 reefer 66,800 dry	8,320 reefer 90,480 dry	14,768 reefer 38,605 dry	16,640 reefer 96,512 dry	10,400 reefer 66,900 dry	1,800 reefer 7,400 dry	15,600 reefer 73,320 dry
Notes		*AELA Members	* Not TFG Members.				* European cargo transferred at Yokohama to Asia/Europe vessel

Europe Services – Service and Supply Factors, 1999

AELA Services

	Eastabout	Eagle	Mediterranean	Round the World	Wilhelmsen RoRo service
Service	6 vessels - fortnightly	6 vessels - fortnightly	5 vessels - fortnightly	8 vessels - every 10 days	9 vessels - fortnightly
Transit time (RV)	85 days	84 days	70 days	84 days	135 days
Ports	Fremantle Adelaide Melbourne Sydney Lisbon Zeebrugge Tilbury Hamburg Rotterdam Fremantle	Sydney Melbourne Adelaide Fremantle Port Said Piraeus La Spezia Zeebrugge Tilbury Hamburg Rotterdam Sydney	Sydney Melbourne Fremantle Jeddah Port Said Piraeus Salerno La Spezia Fos Barcelona Sydney	Brisbane Sydney Melbourne Port Said La Spezia Marseilles Tilbury Rotterdam Dunkirk Le Havre Brisbane	Brisbane Sydney Melbourne Fremantle Singapore*
Members:	P&O Nedlloyd Contship CMA CGM Marfret Hapag-Lloyd CHL Wilhelmsen	P&O Nedlloyd Contship CMA CGM Marfret Hapag-Lloyd CHL Wilhelmsen	P&O Nedlloyd Contship CMA CGM Marfret Hapag-Lloyd CHL Wilhelmsen	P&O Nedlloyd Contship CMA CGM Marfret Hapag-Lloyd CHL Wilhelmsen	
Est. Annual allocated capacity (teus)	1,613 reefer 4,992 dry	2,112 reefer 19,200 dry	1,720 reefer 7,489 dry	2,176 reefer 10,522 dry	No space allocated
Notes					*cargo to Europe transferred at Singapore to other services serving Asia to Europe leg.

Note: **T**he average cargo deadweight varies between the Northbound and Southbound trades,.therefore the amount of available space will differ between these trades.

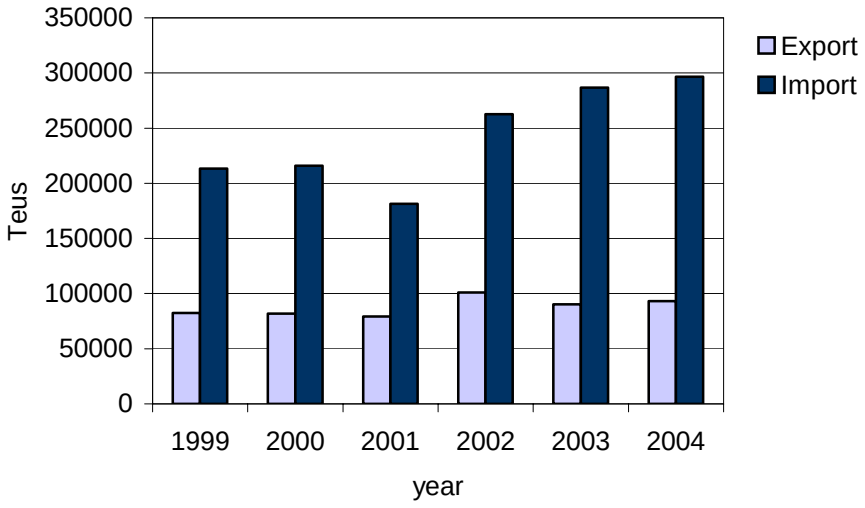
Non AELA Services

	MSC	AAX	ASA	AAA	Maersk/K Line	PIL/MISC	Maersk/Cho Yang/Sealand (East Coast)
Services	12 vessels - weekly	5 vessels - weekly	8 vessels - twice weekly	8 vessels - twice weekly	2 vessels - weekly	4 vessels - fortnightly	5 vessels - weekly
Transit time (RV)	91 days	37 days	30 days	30 days	14 days	60 days	37 days
Ports		Brisbane Sydney Melbourne Adelaide Fremantle Port Kelang Singapore* Brisbane	Brisbane Sydney Melbourne Singapore* Brisbane	Sydney Melbourne Bell Bay Burnie Adelaide Fremantle Port Kelang Singapore* Sydney	Fremantle Singapore* Fremantle	Brisbane Singapore* NZ Brisbane	Sydney Melbourne Brisbane Yokohama** Osaka Busan Kaohsiung Sydney
Membership	MSC	APL NYK P&O Nedlloyd ANL DJL	RCL Lloyd Triestino Hanjin	MISC MOL OOCL PIL Zim	Maersk K Line	PIL MISC	Maersk Cho Yang Sealand

	MSC	AAX	ASA	AAA	Maersk/K Line	PIL/MISC	Maersk/Cho Yang/Sealand (East Coast)
				Hyundai			
Est.total cargo capacity	15,750 reefer 83,500 dry	8,861 reefer 78,541 dry	6,720 reefer 25,421 dry	16,141 reefer 77,958 dry	8,570 reefer 22,963 dry	3,360 reefer 15,302 dry	12,000 reefer 47,000 dry
Notes							* European cargo transferred at Yokohama to Asia/Europe vessel.

Note: The annual capacities are not dedicated to the Australia/Europe Trade. Cargo for other trades are carried on these services.

Europe Services, Export/Import Volumes (TEUs)

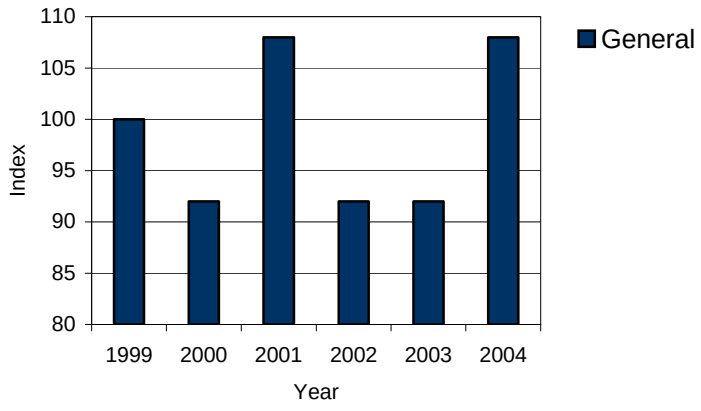


	1999	2000	2001	2002	2003	2004
Export	82536	81884	79191	101132	90348	93058
Import	213337	215907	181358	262526	286659	296692

Source: Australian Port Statistics

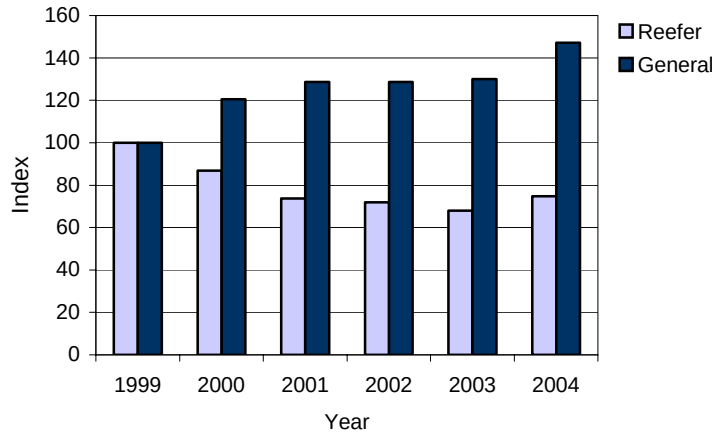
Europe Services, Indexed Average Market Blue Water Rates Per TEU

Southbound



	1999	2000	2001	2002	2003	2004
General Cargo	100	92	108	92	92	108

Northbound



	1999	2000	2001	2002	2003	2004
Reefer	100	87	74	72	68	75
General	100	121	129	129	130	147

European Trade Current Surcharges & Additionals In Melbourne & Rotterdam

Surcharges & Additionals	Northbound	Southbound
PSCs – Port Service Charges	Melbourne: A$31.40 per 20ft A$52.40 per 40ft	Rotterdam: Included in the European THCs.
OTHCs – Origin Terminal Handling Charges	Melbourne: A$310 per unit reefer A$180 per unit general	Rotterdam: EU 245 per unit reefer EU 127 per unit general
BAF – Bunker Adjustment Factor	+12.29% of the freight rate	US$136 per teu
DTHCs – Destination Terminal Handling Charges	Rotterdam: EU 245 per unit reefer EU 127 per unit general	Melbourne: A$211.40 per 20ft general A$242.80 per 40ft general A$288.20 per 20ft reefer A$319.60 per 40ft reefer
EHC – Equipment Handover Charge	A$30 per 20ft A$35 per 40ft	Not applicable
Documentation Fee	A$45 per bill of lading	EU14.50 per bill of lading

Background history

Northbound Bunker surcharge: this surcharge triggers when the weekly calculation results in a +/-5.50% variation or more from the base price over five successive weeks. The movements to this surcharge over recent years have been as follows:

1 February, 2001	Zero
6 June, 2002	+7.49%
27 February, 2003	+16.08%
1 May, 2003	+4.82%
14 August, 2003	+12.29%

Australian THCs: the level of these charges has not altered since their introduction from 1 September, 2000.

Southbound Bunker surcharge: this surcharge triggers when the monthly average price varies by +/-US$5.00 per teu. The movement in recent months has been as follows:

	US$/teu
January 2004	126.00
February	104.00
March	115.00
April	104.00
May	117.00
June	128.00
July	148.00
August	136.00

European THCs: the level of these charges has not altered since 1991.

Equipment Handover Charge (EHC) and Documentation Fee – the above charges represent the average charged by Member Lines. These charges are not collectively agreed under Part X.

Hi-cube containers – in addition to the above surcharges and additionals, Members apply additionals on shipments packed in hi-cube containers.

Trans Tasman – Service and Supply Factors, 2004

Eastbound and Westbound Services

	AELA Eastabout	P&ONL/ANL** Butterfly service	Oceania Vessel Sharing Agreement Pacific South West service	Oceania Vessel Sharing Agreement Pacific North West service	MSC Europe Service	PIL/MISC South East Asia service	Fesco Brisbane service	CP Ships Roro service
Service	10 vessels - weekly	2 vessels - weekly	6 vessels - weekly	7 vessels - weekly	15 vessels - weekly	5 vessels - weekly	5 vessels - weekly	2 vessels - fortnightly
Transit time (RV)	70 days	14 days	42 days	49 days	104 days	35 days	37 days	25 days
Ports	Melbourne Sydney Brisbane Auckland Napier Port Chalmers Europe Melbourne	Sydney Melbourne Bluff Port Chalmers* Lyttelton Wellington Nelson New Plymouth* Sydney * alternate voyages ** ANL is not a Forum Member	Sydney Melbourne Auckland West Coast USA Auckland Sydney	Melbourne Sydney Tauranga West Coast USA Auckland Melbourne	Fremantle Melbourne Sydney Tauranga Lyttelton Sydney Melbourne Adelaide Fremantle Europe Fremantle	Brisbane Auckland Lyttelton Wellington* Nelson* Napier Tauranga Brisbane S E Asia Brisbane * alternate voyages	Brisbane Tauranga Lyttelton Asia Brisbane	Brisbane Sydney Melbourne Auckland Lyttelton Wellington Nelson Tauranga Brisbane
Est. Annual capacity (teus)	3,300 reefer 28,050 dry Cross-over	2,400 reefer 20,000 dry Dedicated	3,400 reefer 23,400 dry Cross-over	3,100 reefer 26,800 dry Cross-over	- 8610 dry Cross-over	2,400 reefer 9,400 dry Cross-over	2,500 reefer 9,200 dry Cross-over	390 reefer 22,900 dry Dedicated

Note: The pace available on cross-over services is not dedicated to the trade between Australia and New Zealand. Cargo for other trades is loaded on these services.
The average deadweight of cargo varies between Eastbound and Westbound trades. Therefore the amount of available space will differ between these trades.

Other Services

	ANL/P&ONL Butterfly service	Maersk - a member of the Oceania Vessel Sharing Agreement Pacific South West service	Pacific North West service	Chief Container Services
Service	2 vessels - weekly	6 vessels - weekly	7 vessels - weekly	2 vessels - fortnightly
Transit time (RV)	14 days	42 days	49 days	28 days
Ports	Sydney Melbourne Bluff Port Chalmers* Lyttelton Wellington Nelson New Plymouth* Sydney * alternate voyages ** ANL is not a Forum Member	Sydney Melbourne Auckland West Coast USA Auckland Sydney ** Maersk is not a Forum Member	Melbourne Sydney Tauranga West Coast USA Auckland Melbourne ** Maersk is not a Forum Member	Bell Bay Melbourne Pt Kembla Sydney Auckland Napier Lyttelton Tauranga Bell Bay
Est.total cargo capacity	10,400 reefer 19,600 dry Dedicated	8,800 reefer 42,100 dry Cross-over	8,800 reefer 42,100 dry Cross-over	Information not available Dedicated

Note: The pace available on cross-over services is not dedicated to the trade between Australia and New Zealand. Cargo for other trades is loaded on these services.

The average deadweight of cargo varies between Eastbound and Westbound trades. Therefore the amount of available space will differ between these trades.

Trans Tasman – Service and Supply Factors, 1999

Eastbound and Westbound Services

	AELA Eastabout	AELA Eagle	AELA Mediterranean	P&ONL Axis Service	P&ONL/Columbus USA East Coast	P&ONL/ Columbus USA West Coast	P&ONL Dedicated Service	ANZDL Lolo USA West Coast	ANZDL Roro	Fesco - Sydney/ Melbourne service	Chief Container Services
Service	6 vessels - fortnightly	6 vessels - fortnightly	5 vessels - fortnightly	5 vessels - weekly	9 vessels - every 10 days	7 vessels - weekly	2 vessels - every 8 days	7 vessels - weekly	2 vessels - every 12 days	8 vessels - weekly	Information not available
Transit time (RV)	85 days	84 days	70 days	35 days	81days	48 days	17 days	49 days	25 days	56 days	Information not available
Ports	Fremantle Adelaide Melbourne Sydney Auckland Wellington Lyttelton Port Chalmers Europe Fremantle	Fremantle Adelaide Melbourne Sydney Auckland Melbourne Adelaide Fremantle Europe Fremantle	Fremantle Melbourne Sydney Auckland Wellington Lyttelton Port Chalmers Melbourne Adelaide Fremantle Mediterranean Fremantle	Brisbane Auckland Napier Tauranga Brisbane S E Asia Brisbane	Melbourne Sydney Brisbane Port Chalmers Wellington Auckland USA East Coast Melbourne	Melbourne Sydney Auckland USA West Coast Melbourne	Sydney Melbourne Bluff Port Chalmers Lyttelton Wellington Nelson Sydney	Sydney Melbourne Auckland USA West Coast Sydney	Brisbane Sydney Melbourne Adelaide Auckland Lyttelton Wellington Nelson Tauranga Brisbane	Sydney Melbourne Auckland Pacific is USA West Coast Sydney	Information not available
Est. Annual allocated capacity (teus)	11,520 reefer/dry Cross-over	1,920 reefer/dry Cross-over	8,000 reefer/dry Cross-over	1,768 reefer/dry Cross-over	2,880 reefer/dry Cross-over	3,920 reefer/dry Cross-over	11,040 reefer/dry Dedicated	7,840 reefer/dry Cross-over	9,280 reefer/dry Dedicated	12,480 reefer/dry Cross-over	Information not available Cross-over

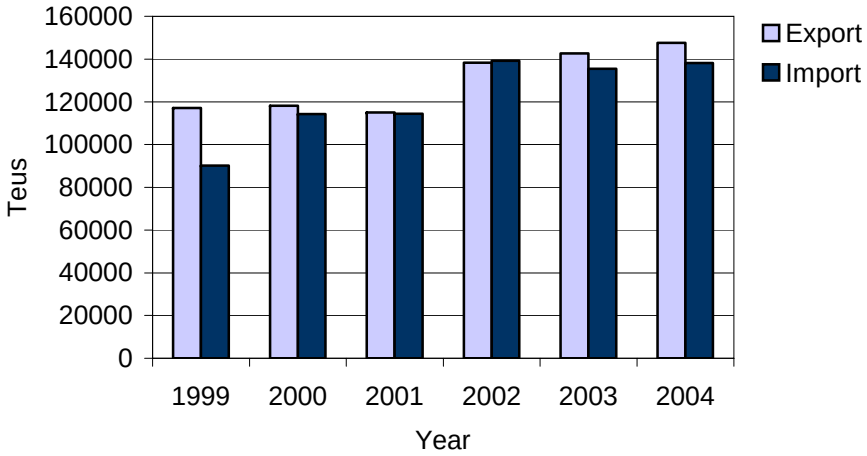
Note: The space available on cross-over services is not dedicated to the trade between Australia and New Zealand. Cargo for other trades is loaded on these services.
The average deadweight of cargo varies between Eastbound and Westbound trades. Therefore the amount of available space will differ between these trades.

Other Services

	PIL/MISC South East Asia Service	MOL South America Service
Service	4 vessels - every 10 days	3 vsls - monthly
Transit time (RV)	40 days	35 days
Ports	Brisbane, Auckland, Lyttelton, Napier, Tauranga, Auckland, Brisbane, S E Asia, Brisbane	Sydney, Melbourne, Auckland, Lyttelton, Sth America , Auckland, Sydney
Est. Total cargo capacity	Information not known Cross-over	720 reefer/dry Cross-over

Note: The space available on cross-over services is not dedicated to the trade between Australia and New Zealand. Cargo for other trades is loaded on these services.
The average deadweight of cargo varies between Eastbound and Westbound trades. Therefore the amount of available space will differ between these trades.

Trans Tasman, Export/Import Volumes (TEUs) Between Australia and New Zealand

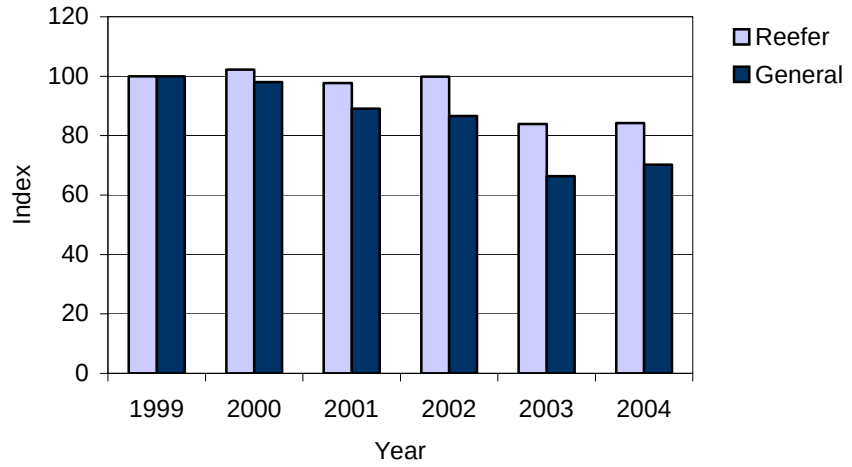


	1999	2000	2001	2002	2003	2004
Export	117,037	118,161	114,991	138,377	142,620	147,612
Import	90,123	114,294	114,428	139,246	135,513	138,223

Source: Australian Port Statistics

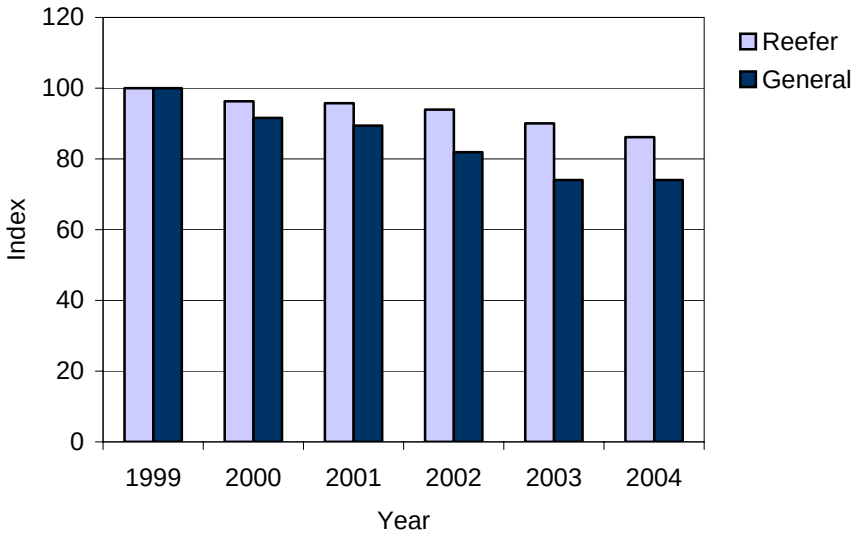
Trans Tasman, Indexed Average Market Blue Water Rates Per TEU

Eastbound



	1999	2000	2001	2002	2003	2004
Reefer	100	102	98	100	84	84
General	100	98	89	87	66	70

Westbound



	1999	2000	2001	2002	2003	2004
Reefer	100	96	96	94	90	86
General	100	92	89	82	74	74

Trans Tasman Trade Current Surcharges & Additionals in Melbourne & Auckland

Surcharges & Additionals	Eastbound Trade	Westbound Trade
OTHC (Origin Terminal Handling Charge)	Melbourne: Not applicable	Auckland: Not applicable
PSC (Port Service Charge)	Melbourne: A$31.40 per 20ft A$52.40 per 40ft	Auckland: Not applicable
BAF (Bunker Adjustment Factor)	A$211 per teu	NZ$480 per teu
CAF (Currency Adjustment Factor)	6.58%	Not applicable
DTHC (Destination Terminal Handling Charge)	Auckland: NZ$123 per 20ft NZ$213 per 40ft	Melbourne: A$60 per 20ft A$120 per 40ft
EHC (Equipment Handover Charge)	A$30 per 20ft A$35 per 40ft	Not applicable
Documentation Fee	A$50.00 per bill of lading	NZ$20.00 per bill of lading

Background history:

Eastbound BAF: the surcharge triggers when the weekly calculation results in a +/-A$25 per teu variation or more from the current surcharge over five successive weeks. The movement of this surcharge in recent years has been as follows:

	A$/teu
24 April, 2002	132
19 June	170
16 October	213
18 December	160
12 February, 2003	211
28 May	154
20 August	191
10 December	163
30 June, 2004	211

Westbound BAF: the calculation for this surcharge is carried out each month with the trigger point being the movement between the US$20 bands of weighted average for the fuel price. The movement of this surcharge in recent years has been as follows:

	NZ$/teu
1 July 2002	399
11 November	488
20 December	445
20 January, 2003	350
20 February	418
20 March	486
3 April	513
30 May	448
23 September	480

Equipment Handover Charge (EHC) and Documentation Fee – the above charges represent the average charged by Member Lines. These charges are not collectively agreed under Part X.

Hazardous cargo and hi-cube containers – in addition to the above surcharges and additionals, Members also apply additional charges shipments packed into 20ft hi-cube containers and shipments of hazardous cargo.

Middle East, Gulf, Indian Sub-Continent Service and Supply Factors, 2004

Conference Service

	AMEG/AWIPSL	
Service Notes	Both services performed by the same ships.	
Ports	Brisbane	Brisbane
	Sydney	Sydney
	Melbourne	Melbourne
	Adelaide	Adelaide
	Fremantle	Fremantle
	Singapore	Singapore
	Jebel Ali*	Colombo*
	Dammam*	Nhava Sheva*
	Bandar Abbas*	Karachi*
Members	NYK Line	NYK Line
	P&O Nedlloyd	P&O Nedlloyd
Est. Annual Allocated Capacity TEUs	2,600 reefer 10,400 dry	

Note: *Transhipment via Singapore performed by AAX Member Lines

Non Conference Service

	AAX	ASA	AAA	Maersk/ K Line (West Coast)	PIL/MISC	AELA Westabout	MSC European Service	MSC East/North Asia Service	Swire
Service	4 vessels weekly	4 vessels weekly	8 vessels twice weekly	2 vessels weekly	4 vessels fortnightly	12 vessels weekly	15 vessels weekly	6 vessels weekly	4 vessels -fortnightly
Transit time (RV)	28 days	28 days	28 days	14 days	56 days	84 days	104 days	41 days	56 days
Ports	Brisbane Sydney Melbourne Adelaide Fremantle Port Kelang Singapore** Brisbane	Brisbane Sydney Melbourne Singapore** Brisbane	Sydney Melbourne Bell Bay Burnie Adelaide Fremantle Port Kelang Singapore** Sydney	Fremantle Singapore** Fremantle	Brisbane Singapore** NZ Brisbane	NZ Sydney Melbourne Adelaide Fremantle Singapore** Europe NZ Sydney	NZ Sydney Melbourne Adelaide Fremantle Singapore** Europe NZ Sydney	Singapore Fremantle Asia Fremantle	Sydney Newcastle Brisbane Gladstone Townsville Darwin Jakarta Port Kelang Singapore** Surabaya Sydney

	AAX	ASA	AAA	Maersk/ K Line (West Coast)	PIL/MISC	AELA Westabout	MSC European Service	MSC East/North Asia Service	Swire
Members	APL	RCL	MISC	Maersk	PIL	P&O Nedlloyd*	MSC		NGPL
	NYK*	Lloyd Triestino	MOL	K Line	MISC	CP Ships			
	P&O Nedlloyd*	Hanjin	OOCL			CMA CGM			
	ANL	Evergreen	PIL			Marfret			
	DJL		Zim			Hapag-Lloyd			
			Hyundai			Hamburg Sud			
						CHL			
Est. total Capacity TEUs	8,320 reefer 90,480 dry	14,768 reefer 38,605 dry	16,640 reefer 96,512 dry	10,400 reefer 66,934 dry	1,800 reefer 7,400 dry	17,400 reefer 57,500 dry	Information Unknown	Information Unknown	Information Unknown

Notes: The annual cargo capacities are not dedicated to the Australia/Middle East/Indian sub-Continent Trades. Cargo for other trades is carried on these services. The average cargo deadweight varies between the Northbound and Southbound trades. Therefore the cargo capacities will differ between these trades.

* AMEG/AWIPSL Members

** Cargo on carried at Singapore to Indonesia, Thailand, Brunei, Cambodia, Vietnam and major markets outside of the region.

Middle East, Gulf, Indian Sub-Continent Service and Supply Factors, 1999

Conference Service

	AMEG/AWIPSL	
Service	4 Vessel, 17 days Both services performed by the same ships.	
Transit times (RV)	60 days	60 days
Ports	Melbourne	Melbourne
	Fremantle	Fremantle
	Muscat	Colombo
	Dubai	Mumbai*
	Bahrain	Karachi*
	Bandar Khomeini*	Cochin*
	Dammam	Melbourne.
	Kuwait	
	Umm Qasr*	
Members	NYK Line	NYK Line
	P&O Nedlloyd	P&O Nedlloyd
Est. Annual Allocated Capacity TEUs	4,928 reefer 15,101 dry	

* By transhipment

Non Conference Services

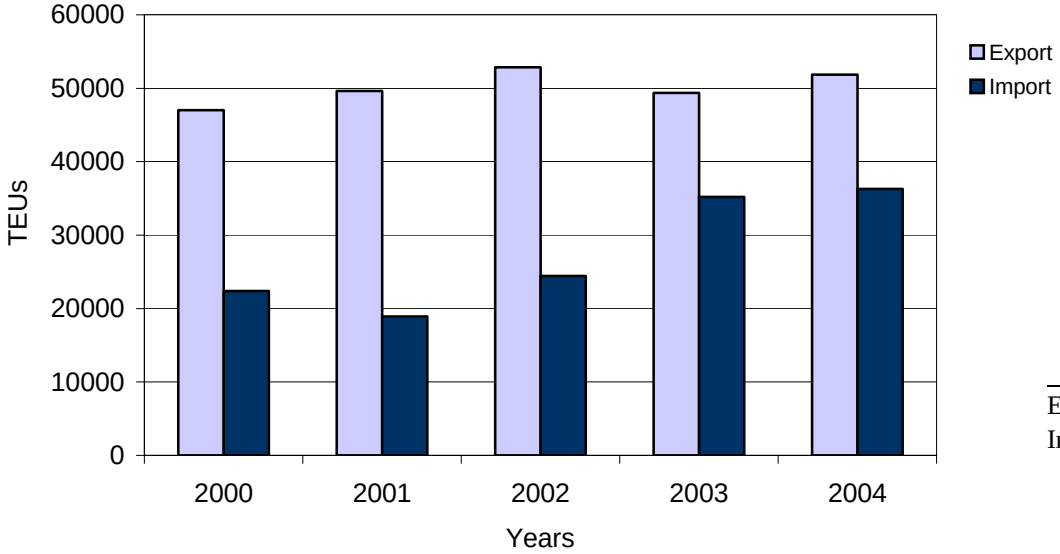
	AAX	ASA	AAA	Maersk/ K Line (West Coast)	PIL/MISC	AELA Eagle	AELA Mediterranean	AELA Round the World	Wilhelmsen
Service	5 vessels weekly	8 vessels twice weekly	8 vessels twice weekly	2 vessels weekly	4 vessels fortnightly	6 vessels fortnightly	5 vessels fortnightly	8 vessels every 10 days	
Transit time (RV)	37 days	30 days	30 days	14 days	56 days	84 days	70 days	84 days	135 days
Ports	Brisbane	Brisbane	Sydney	Fremantle	Brisbane	Sydney	Sydney	Brisbane	Brisbane
	Sydney	Sydney	Melbourne	Singapore**	Singapore**	Melbourne	Melbourne	Sydney	Sydney
	Melbourne	Melbourne	Bell Bay	Fremantle	NZ	Adelaide	Fremantle	Melbourne	Melbourne
	Adelaide	Singapore**	Burnie		Brisbane	Fremantle	Singapore**	Singapore**	Fremantle
	Fremantle	Brisbane	Adelaide			Singapore**	Europe	Europe	Singapore**
	Port Kelang		Fremantle			Europe	Fremantle	NZ	Far East
	Singapore**		Port Kelang			Fremantle	Melbourne	Brisbane	Nth America
	Brisbane		Singapore**			Adelaide	Sydney		Europe
			Sydney			Melbourne			NZ
						Sydney			Brisbane
Members	APL	RCL	MISC	Maersk	PIL	P&O Nedlloyd*	P&O Nedlloyd*	P&O Nedlloyd*	P&O Nedlloyd*
	NYK*	Lloyd Triestino	MOL	K Line	MISC	Contship	Contship	Contship	Contship
	P&O Nedlloyd*	Hanjin	OOCL			CMA CGM	CMA CGM	CMA CGM	CMA CGM
	ANL	Evergreen	PIL			Marfret	Marfret	Marfret	Marfret
	DJL		Zim			Hapag-Lloyd	Hapag-Lloyd	Hapag-Lloyd	Hapag-Lloyd
			Hyundai			CHL	CHL	CHL	CHL
						Wilhelmsen	Wilhelmsen	Wilhelmsen	Wilhelmsen
Est. Annual Capacity TEUs	8,861 reefer 78,541 dry	6,720 reefer 25,421 dry	16,141 reefer 77,958 dry	8,570 reefer 22,963 dry	3,360 reefer 15,302 dry	8,800 reefer 58,500 dry	8,700 reefer 41,400 dry	9,600 reefer 60,800 dry	3,800 reefer 48,600 dry

Notes: The annual cargo capacities are not dedicated to the Australia/Middle East/Indian sub-Continent Trades. Cargo for other trades is carried on these services.

* AMEG/AWIPSL Members

**Cargo oncarried at Singapore to Indonesia, Thailand, Brunei, Cambodia, Vietnam and major markets outside of the region.

Australia, Middle East, Gulf, Indian Sub-Continent, Export/Import Volumes (TEU)

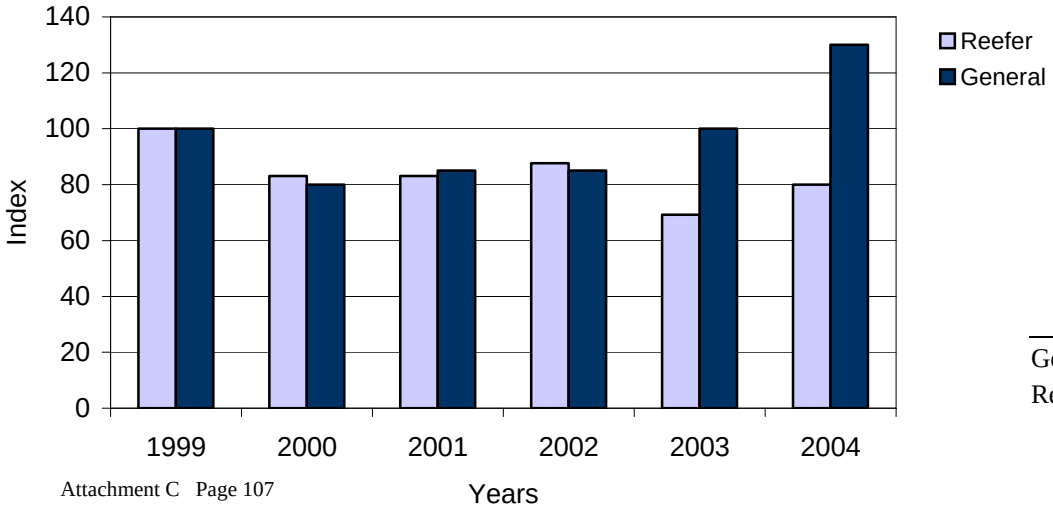


	2000	2001	2002	2003	2004
Export	47,015	49,642	52,869	49,379	51,848
Import	22,389	18,932	24,437	35,197	36,312

Source: Australian Port statistics

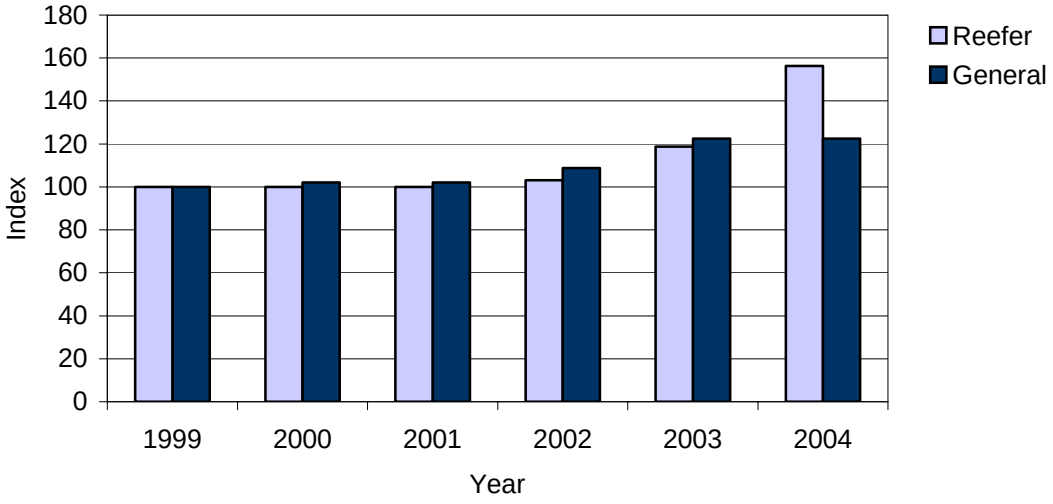
Australia, Middle East, Gulf, Indian Sub-Continent, Average Market Blue Water Rates Per TEU

AMEG, (Jebal Ali, Northbound) Indexed: 1999=100



	1999	2000	2001	2002	2003	2004
General	100	80	85	85	100	130
Reefer	100	83	83	88	69	80

AWIPSL, (Colombo) Indexed: 1999=100



	1999	2000	2001	2002	2003	2004
General	100	102	102	109	122	122
Reefer	100	100	100	103	119	156

Australia, Middle East, Gulf, Indian Sub-Continent, Commonly Applied Surcharges and Additional in Melbourne & Jebel Ali & Colombo

Surcharges & Additionals	Northbound	Southbound
		Southbound cargo from these regions are covered by the All Lines' Southbound Agreement
Bunker Surcharge	US$40 per 20ft US$70 per 40ft	US$165 per teu
PSC (Port Service Charges)	Melbourne: A$31.40 per 20ft A$52.40 per 40ft	Not applicable
THC (Terminal Handling Charges)	Melbourne: A$260 per unit for reefer A$170 per unit for general cargo	Determined by each Member
EHC (Equipment Handover Charges)	Melbourne: A$30 per 20ft A$35 per 40ft	Not applicable
Documentation Fee	A$45 per bill of lading	Determined by each Member
DTHC (Destination Terminal Handling Charges)	Jebel Ali: DHS420/20ft Reefer/Dry DHS620/40ft Reefer/Dry Colombo: Reefer: US$331/20ft US$496/40ft Dry: US$115/20ft US$184/40ft	Melbourne: Determined by each Member
PSS (Peak Season Surcharge)	Not applicable	US$300 per teu

Background History

Northbound Bunker surcharge: this surcharge triggers when the weekly calculation results in a +/-US$25 per tonne variation or more from the base price over five successive weeks. The movement of this surcharge in recent years has been as follows:

	US$/20ft	US$/40ft
17 June, 2002	20	35
6 March, 2003	45	75
26 June, 2003	20	35
24 June, 2004	40	70

Australian THCs: the level of these charges has not altered since their introduction from 1 August, 2000.

Southbound Bunker surcharge:

	US$/teu
1 October, 2000	125
1 April, 2002	85
1 July, 2002	110
1 October, 2002	135
10 March, 2003	185
10 May, 2003	140
1 July, 2004	165

Equipment Handover Charge (EHC) and Documentation Fee, the above charges represent the average charged by Member Lines. These charges are not collectively agreed under Part X.

Hazardous cargo, in addition to the above surcharges and additionals, Member Lines apply a charge to shipments of hazardous cargo.

EXTRACT FROM WORLD SHIPPING COUNCIL'S ANALYSIS AND COMMENTS ON THE OECD SECRETARIAT'S PAPER, "LINER SHIPPING COMPETITION POLICY REPORT"

The Report's "Four Points of Agreement" and Three Proposed Principles

The ocean carriers are in agreement with the Report's four points of agreement stated in paragraph 189, and believe that they do fairly represent the state of agreement.

Ocean carriers do not believe, however, that the "three proposed principles" are an accurate or acceptable expression of those points of agreement.

The proposed principles are unclear in places, and the narrative in the explanatory paragraphs does not always coincide with the stated principle.

Ocean carriers have worked cooperatively and in good faith with various OECD governments to help produce a clear, specific, predictable and comprehensive liner shipping regulatory regime in accordance with the Policy Principles agreed to by OECD governments in 1997[17]. After such regimes are implemented and found to be successful - as they have been, it is neither a "middle ground" nor an appropriate "way forward" to propose principles, which have already been thoroughly reviewed and specifically addressed in the existing regulatory regime, and which do not follow from the four points of agreement,

Proposed Principle 1

Freedom to negotiate: *Shippers and ocean carriers should always have the option of freely negotiating rates, surcharges and other terms of carriage on an individual basis.*

- Terms of carriage should be freely negotiable in contract negotiations. Whether and how the parties negotiate such contractual terms is up to the parties. This is current law.

- It would make no sense to require tariffs to be freely negotiated on an individual basis, nor would it make sense to require each standard term of contract carriage to be so negotiated.

- Confidentiality, including its meaning, scope and consequences, is an issue that the parties to the contract should negotiate. It is acceptable to prohibit a carrier agreement from requiring a member to disclose confidential information, as current law provides.

- If this proposed principle is intended to imply that carrier agreements cannot

[17] MTC Conclusions on Work on Promotion of Compatibility of Competition Policy Applied to International Liner Shipping Including Multimodal Transport With a Maritime Leg (OECD, 1997).

continue discussion or agreement activities currently allowed by law, it is unacceptable. The second sentence of paragraph 192 indicates that this proposed principle is not a "middle ground", but intended to "replace" carrier agreement authority,

- The first and last sentences of paragraph 192 are current law.

Proposed Principle 2

Freedom to protect contracts: *Shippers and ocean carriers should always be able to protect contractually key terms of negotiated service contracts, including information regarding rates, and this confidentiality should be given maximum protection.*

- The statement in paragraph 193 is current law.

- The issue of confidentiality should be a matter left to commercial negotiation, rather than as discussed in paragraph 194, Confidentiality is obviously effective and meaningful when it is mutual; if the obligation isn't mutual, the information isn't confidential. Carriers and shippers should be free to agree on whatever information they want to keep confidential, what that means, and its consequences. It is particularly important that the parties have the ability to agree on the consequences for breach. This is not always a simple issue. For example, some shippers are unable to commit to confidentiality because they provide the contract information to third parties, such as their freight forwarder. Such a third party is not bound by a confidentiality agreement with the carrier and has other customers it works for, or it may be a customer of the carrier itself (as a forwarder or as an NVOCC in U.S. trades). Furthermore, breach of the contract can give rise to very substantial damages today; consequential damages for breach of a confidentiality obligation could be very large, especially to a shipper if the breach were to cause other shippers to obtain lower rates. Accordingly, this is a matter that is most appropriately left to the parties as a matter of contract negotiation.

- The Federal Maritime Commission's two-year study of OSRA shows that the contracting parties are perfectly capable of agreeing on how to address this issue, and further shows there is no evidence of any problem with regard to contract confidentiality requiring more intrusive government intervention. The Report contains no contrary facts.

Proposed Principle 3

Freedom to coordinate operations*: Ocean carriers should be able to pursue operational and/or capacity agreements with other carriers as long as those do not confer undue market power to the parties involved.*

- Carriers should be able to pursue agreements currently authorized by law. The Corrigendum's correction of the "errant words" in the proposed principle does not appear to eliminate the intent of those errant words. To say that carriers should be "able to pursue operational agreements" implies that they should not enter into other kinds of agreements; this is entirely consistent with the "errant

words" and is unacceptable. Such an approach is also incompatible with existing law that has a carefully structured and regulated manner for carriers to enter into various kinds of agreements.

- There is no definition of the term "undue market power". For example, Box 2.1 in the paper would imply that simple arithmetic addition of carriers' market shares could be interpreted to be market power, when in fact the carriers were all competing fiercely against each other. Existing law, which protects against abuses of market power as well as a host of different regulated and prohibited acts, is much clearer and preferable.

- The first sentence of the second paragraph of paragraph 195 is unacceptable. Carriers should be able to rationalize their operations for many reasons, not just "in order better to deliver services", but to reduce costs, address seasonal demand fluctuations, and other purposes.

- The following sentence of paragraph 195 is not correct. Capacity agreements "beyond those necessary for operational reasons" are not necessarily "tantamount to price fixing". Eliminating economic waste is hardly the same thing as price fixing. The European Commission, the United States and other nations have frequently and appropriately approved agreements that address seasonal demand variations. Furthermore, this proposed principle is vague regarding what standard "necessary" might impose and who would judge it. Existing law addresses the issue satisfactorily and is much clearer.

- The fourth and fifth sentences of this second paragraph of paragraph 195 are highly dogmatic. While it is certainly true that a trade wide capacity agreement would require closer scrutiny by regulators, it is not correct to assume that a trade wide agreement could not possibly address an abnormal market problem in an efficient, effective and acceptable manner that preserved all carriers' quality of service, ensured ample capacity for service and pricing competition, and eliminated unnecessary costs.

- Regarding paragraph 196, the Report does not identify a single instance of a carrier agreement unreasonably "manipulating supply". The reason is that there are none. There is no factual basis to justify the report characterizing this theoretical concern as "this problem". The Report also fails to address the fact that as long as a carrier agreement provides ample capacity to the trade and pricing competition is maintained, agreements that removed unnecessary capacity could provide cost savings that would benefit all parties and would not be "manipulating" supply.

- Finally, if one eliminates the carrier's limited and regulated antitrust immunity for rate purposes as this third proposed principle would do, there is no reason to have proposed principles I and 2, as they only address issues that arise under a regime that has immunity.

OPINION

Shipping Australia Ltd: International Issues Raised by the Productivity Commission's Review of Part X of the Trade Practices Act 1974 (International Liner Cargo Shipping)

Introduction

1. I am asked by Shipping Australia Ltd. to comment on issues raised by the Terms of Reference of the Productivity Commission in its 2004 review of Part X of the Trade Practices Act 1974 (Cth), which deals with International Liner Cargo Shipping. In particular I am asked to discuss the issues facing the Commission having regard to the general international approach to the regulation of conference shipping, including the question of avoiding conflicts of jurisdiction.

2. My qualifications are as follows. I am a Senior Counsel of the New South Wales bar and a member of the English bar, practising through Matrix Chambers. I was formerly Challis Professor of International Law at the University of Sydney and have been since 1992 Whewell Professor of International Law in the University of Cambridge. From 1992-2001 I was the Australian member of the United Nations International Law Commission. In 1988 I advised on the scope of the then proposed new Part X of the 1974 Act. In 1993 I gave evidence to the Brazil Inquiry into the revision of Part X.[1] In 2000 I advised again on proposed amendments to Part X.[2] Since 1988 I have advised frequently on questions of the application and interpretation of Part

[1] J Crawford, "Shipping Conference Services: Review of Part X of the Trade Practices Act 1974", 13 July 1993.

[2] J Crawford, "Liner Shipping Services Ltd: Proposed Trade Practices (International Liner Cargo Shipping) Bill 2000", 8 June 2000.

X to international shipping. I have also worked more broadly in areas of international shipping law. As a member of the Australian Law Reform Commission I was responsible for the Report which led to the enactment of the Admiralty Act 1988 (Cth),[3] and thereafter (until my appointment to Cambridge) was a member of the Commonwealth's Admiralty Rules Committee. I am an honorary member of both the Australian and British Branches of the Maritime Law Association.

The international approach to regulation of conference shipping

3. Historically the international approach to conference shipping was expressed in the legislation of Australia's major trading partners (for example, the European Union, the United States, Japan, New Zealand, Canada). It was reflected in the United Nations Code of Conduct for Liner Conferences of 6 April 1974 (even though other aspects of that Code, in particular its cargo reservation provisions, were controversial).[4] In accordance with this general approach, conferences are accepted as a valid way of organizing liner shipping services; subject to appropriate safeguards, and necessary exemptions are granted from antitrust and competition legislation to allow for the continued functioning of conferences. This is done either by a separate Shipping Act (as in the United States, Canada and New Zealand) or by the grant of appropriate block exemptions from antitrust legislation (as in the European Union).[5] Australia chose an intermediate approach; a specific regulatory system under a separate part of the Trade Practices Act, but no special regulatory authority for the shipping industry.

4. This system has been repeatedly reviewed in the various countries and repeatedly retained, though with variations and certain additional safeguards. That is certainly the case in Australia, with earlier reviews in 1977, 1986, 1993 and 1999.[6]

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[3] See ALRC 33, *Civil Admiralty Jurisdiction* (AGPS, Canberra, 1986).

[4] Convention on a Code of Conduct for Liner Conferences, 6 April 1974, 1334 UNTS 15 (in force, 6 October 1983). There are currently 78 parties (including China but not including USA, Canada, EU, Australia, New Zealand or Japan).

[5] For an informed overview of the position see M Brooks, *Sea Change in Liner Shipping* (Pergamon, Amsterdam, 2000) esp chs 8-9. In an Appendix, ibid. 221-38 she summarises the regulatory position in the US, EU and Canada as at 1999.

[6] See Productivity Commission, *International Liner Cargo Shipping: A Review of Part X of the Trade Practices Act* (Melbourne, 1999).

Indeed one informed Canadian commentator praises the thoroughness of the Australian review process.[7]

5. Over the past 25 years there has been a see-sawing debate over the merits of this approach. Competition authorities have been sceptical about the arguments for stability and regularity of service made by carriers and by transport regulators, and they have repeatedly sought (but consistently failed to obtain) the abolition of all special treatment for liner shipping. This contest manifests itself, for example, in the United States as between the Federal Maritime Commission and the Department of Justice; within the EU between DG IV (Competition) and DG VII (Transport). The normal outcome of these cyclical reviews and challenges has been the retention of the basic instruments with an increased degree of scrutiny and capacity for regulatory oversight. In other words, liner shipping legislation has evidenced a 25-year movement from being a mere instrument of exemption towards becoming a specific vehicle for regulation, one which takes into account the special features of the industry at the international level. This is, as will be seen, a continuing process—but advocates of radical change have not been able to point to advantages that would flow from their approach, having regard to the actual conditions of the trade.[8]

6. From an Australian point of view, there have always been good arguments not to depart from a general or common international approach. These arguments satisfied (among others) the Brazil Committee in 1993 and the Productivity Commission itself in 1999. Australia is significantly dependent on liner shipping but it has only a limited involvement in the industry: liner carriers are overwhelmingly foreign-owned and controlled. Australian movements represent only 2-3% of world liner trades. The terms of trade are largely determined elsewhere. As is common on many routes, there is significant imbalance as between outwards and inwards shipping. Shipping costs are normally a tiny fraction of cargo values (and are frequently less than land-based costs

[7] Brooks (2000), 260.

[8] The Australian Competition and Consumer Commission's experience in its investigation of the Australia-Asia Discussion Agreement in 2004 reflects this debate in microcosm. See Thompson Clarke/ACIL Tasman Discussion Paper, "2004 Review of Part X of the Trade Practices Act 1974", 17 August 2004, paras. 2.4, 3.4, 3.6.6.

for the same cargoes). There is no indication that liner shipping produces monopoly profits for carriers. To all appearances the industry is contestable; there is a significant degree of entry and exit from particular routes and from the industry as a whole. Independent carriers operate in all the trades and collectively have a significant market share—more than 50% in many of them. Trade cycles lead to considerable fluctuations in demand and consequent price changes (as recently in the China trades), but these are largely outside the power of Australian legislation to control.[9] Faced with this general situation, the idea that Australia should—uniquely—approach liner shipping through *ad hoc* exemptions under Part VII of the Trade Practices Act does not seem persuasive, and it has not convinced successive review panels or successive governments. The dominant Australian interest has been in regularity and reliability, especially in outwards shipping i.e. in the Australian export trade.

7. The question is whether anything has changed since 1999 which should lead to any different result. It is true that there have been significant changes in the industry, and that more are in prospect. But I do not believe these support the conclusion that Part X should be abolished. Rather, an incremental approach is appropriate for Australia as a marginal player in a world-wide industry which is undergoing turbulent change.

8. Moreover there are aspects of Part X specifically tailored to meet Australian national interests which would be lost with its repeal. For example, outwards shipping contracts must be subject to Australian law and dispute resolution procedures (s 10.06). Through the system of designated shipper bodies, Part X at least gives shippers a voice and a forum for discussion. An informed estimate would be that the alternative to Part X is likely to be greater concentration, the internalization of discussions within foreign-dominated consortia, alliances and firms, and a *reduction* in shipper influence. From a specifically Australian point of view there may be a case for seeking to modify the trend towards erosion of any rate-making authority of discussion agreements/conferences in the Australian trades.

[9] For details see the Thompson Clarke/ACIL Tasman Discussion Paper.

Regulatory change and stability – US and EU Experience

9. The dramatic changes which are occurring in the world container trade (increase in size of vessels, increase in capacity in given trades, shifts in trade balances) are outlined in the Thompson Clarke/ACIL Tasman Discussion Paper. At the same time there are two major sources of regulatory change or potential change – the United States and the EU.[10] Something should be said about each.

United States developments

10. In 1998 the United States reviewed the Shipping Act 1984, and made some important changes, while maintaining the basic approach. The Ocean Shipping Reform Act 1998 (USA) ("OSRA") allows for confidential contracts between individual carriers and shippers, irrespective of the general conference rate.[11] In 2001, two years after OSRA's entry into force, a Federal Maritime Commission ("FMC") review concluded that it had been generally successful in achieving the objective of "a more market-driven, efficient liner shipping industry".[12] The FMC report referred to "the apparent widespread general satisfaction with the current US regulatory framework for ocean shipping".[13]

11. The FMC's 2001 Report identifies a number of general trends leading to "the restructuring of the liner shipping industry", including the following:

> "Carriers continue to use supply-side operational agreements, including global strategic alliances, to expand service and geographic coverage, while limiting individual risk and capital. Industry reports indicate that in the main east-west trades, alliances now account for between 60 and 65 per cent of all capacity deployed, and have, along with the use of new technologies, enabled ocean carriers to reduce their average cost by more than $260/TEU over the past four years.

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[10] By contrast the position in Japan, Korea, Canada and New Zealand appears to be stable. For Canada see Transport Canada, Consultation Paper, "Shipping Conferences Exemption Act, 1987" (July 1999), http://www.tc.gc.ca/pol/en/scea/consultationPaper.htm. This led to the Canada Shipping Act 2001, Bill C-14, amending the Shipping Conferences Exemption Act 1987. The amended Shipping Conferences Exemption Act is at: http://www.tc.gc.ca/acts-regulations/GENERAL/S/scea/act/scea.html.

[11] 46 App. U.S.C. 1701, s. 5(c), 8 (c).

[12] Federal Maritime Commission, *The Impact of the Ocean Shipping Reform Act of 1998* (September 2001) 2.

[13] Ibid., 7. At the same time the FMC noted a number of specific areas for possible review and action: ibid., 49-53.

> Broad-based discussions agreements with non-binding rate authority have become the primary forum for carriers to exercise their antitrust immunity with regard to rate levels"[14]

Between 89-90% of liner cargo in the US trades is now carried pursuant to individual (confidential) service agreements.

12. The FMC's Chairman, testifying before Congress, has summarised the position as follows:

> "…conferences have largely been replaced by more loosely structured 'discussion agreements' under which carriers may discuss and agree on rates (or other subjects specifically authorized in their agreements), but may not require each other to adhere to those agreements… The degree to which collective action may effectively impact rates under these 'voluntary guidelines' appears to depend substantially upon economic factors beyond the control of the carrier groups engaged in rate setting…
>
> Other forms of carrier cooperation appear to be at least benign, or more importantly, beneficial to consumers of shipping services as well as carriers. These include agreements for the shared use of assets, ranging from chassis and container pools, which reduce costs and increase economic efficiency for the carriers and make equipment more easily available to shippers. There are also agreements which provide a degree of carrier cooperation in the sharing of vessels through slot exchanges or the more integrated operations of vessel sharing agreements ('VSAs') and alliances. Such agreements enable carriers to maintain an individual presence in a wider range of markets, with a greater frequency of service, while limiting their exposure to investment risk. They may also have the effect of slowing the pace of industry concentration through mergers, by offering carriers the economies of scale associated with mergers without the loss of individual market presence and national identity."[15]

The FMC Chairman concluded that:

> "The new market-oriented provisions of OSRA are working well and I believe that removal of the limited antitrust immunity conferred by the Shipping Act of 1984 would impede the efficient operations of the liner industry."[16]

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14 Ibid., 3.

15 Statement of Hon Harold J. Creel, Jr., Chairman, Federal Maritime Commission, submitted to the Committee on the Judiciary, United States House Of Representatives, June 5, 2002, http://www.fmc.gov/Speeches/Creel/HR1253%20statement.htm.

European Union developments

13. Until very recently the European Commission was generally supportive of the EU position as set out by the Council in EC Regulation 5056/86 of 22 December 1986. In March 2000 it was stated by the official responsible for EU policy that the European Commission is "not at present considering any proposal to modify or abolish the block exemption under the EC competition rules".[17] That is no longer true, but the flurry of activity leading to the Discussion Paper produced by the Directorate-General responsible for competition policy (DG IV) in 2004 should not be taken to indicate a final view even of DG IV,[18] let alone of the EU or the Member States, a number of whom have, I understand, been rather critical of the Discussion Paper.

14. As part of the review process, DG IV commissioned an analysis by Professor Harakambides and others of Erasmus University of responses to the Consultation Paper (hereafter the "Erasmus Report").[19] The body of the Erasmus Report is a summary with intermittent commentary of submissions made in response to the consultation paper, and as such does not call for further analysis. The authors conclude that "no convincing new arguments are made either for or against the existence of conferences".[20] In that context it calls for "much better data sources, especially on freight revenues from confidential service contracts" (something which the carrier's association, the European Liner Affairs Association (ELAA) have offered to provide.[21] The Report concludes:

> "In view of the fact that nowadays 80-90% of general cargo traffic is carried under service contracts, it could be strongly argued that the antitrust immunity of conference price-setting is becoming increasingly irrelevant and thus neither party should actually have any strong feelings either on maintaining or abolishing 4056/86. At the same time, shippers

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16 Ibid. See further Federal Maritime Commission, *42nd Annual Report for Fiscal Year 2003* (Washington, 31 March 2004) for the latest review of its activities.

17 J Mensching, "Liner shipping: Examining the development and impact of European legislation" (unpublished speech, 22 March 2000, p. 10 (available at http://europa.eu.int/comm/dg04). See also the Carsberg Report: *Final Report of the Multimodal Group* (Brussels, November 1997).

18 This is of course the formal position as stated in the discussion paper itself: "Review 4056/86" (2004), p. 1, obtainable at http://site_sources\comm\competition\antitrust\others\maritime\review_4056. But it also reflects the actual situation within the EU and Member States.

19 Haralambides, HE, Veenstra, AW, Fusillo, M, Sjostrom, W and Hautau, U, *Final report on public submissions received in response to the Consultation Paper* (Rotterdam, November 2003), available at http://europa.eu.int/comm/competition/antitrust/others/maritime/.

20 Ibid., 66.

21 Ibid., 67.

> appear to be either in favour of other forms of market self-regulation, such as consortia and alliances that have become the rule. It is thus believed that the way forward would be to strike a compromise between abolishing price-setting immunity while at the same time ensuring that conditions are put in place to safeguard the longevity, sustainability and success of liner shipping alliances."[22]

15. Perhaps of greater interest are the two annexes to the Erasmus Report. The first discusses theoretical issues associated with antitrust exemption for conferences (an exemption which is of course partial and qualified[23]) and concludes:

> "Restrictions on competition, in the form of shipping conferences, are a low cost way to ensure that the liner market is sustainable. The low cost[s] are signified in the low profitability of the industry, and the fact that there is no need for an independent regulatory body which would guard the requirements of stable services and rates. In other words, conferences may look like, but do not act as if they are a price fixing cartel. This is further substantiated by Clyde and Reitzes (1998) and Sjostrim (1989) [who] find no evidence that conferences raise freight rates, and may well lower them."[24]

16. The second annex is a statistical analysis of freight rate stability, using publicly available data. The Erasmus Report notes:

- "in real terms, [freight rates] have been in general decline since the last quarter of 1993" (p. 90);
- The results (though not rising to the level of statistical significance) "weakly suggest that concentration and by association conferences promotes freight rate stability" (p. 102);
- "in light of their negative impact on freight rate levels, conferences serve as a moderating force on what would otherwise be fiercer competition among shipping lines. Since modern liner shipping is essentially a commodity service, small changes in price will cause large changes in market share. If carriers are aware of each other's pricing, then price cutting to gain market

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22 Ibid.

23 For relevant EU decisions see *Compagnie Maritime Belge Transports SA v. Dafra-Lines A/S*, judgment of 16 March 2000 (ECJ); *Joined Cases T-191/98, T-212/98, T-213/98 and T-214/98, Atlantic Container Line AB & others v Commission of the European Communities*, judgment of 30 September 2003 (CFI).

24 Erasmus Report, p. 82.

share can proceed in smaller increments than if information was asymmetrical" (ibid.);

- "it may be reasonable to conclude that market concentration has a positive impact on freight rates, while conferences play almost no role and in fact may dampen freight rates" (p. 104);
- "it is likely that the liner conference rate acts more and more as a benchmark that serves as a starting point for negotiations of service contracts, even for non-conference members. It is questionable if this benchmark has any direct effect on the final price that is agreed between parties" (p. 105).

17. In its Discussion Paper, DG COMP is dismissive of the Erasmus Report's analysis of economic factors, and rejects proposals for further fact-finding:

> "the consultants use data in their annex that, if at all, can only be considered second-best. Most of the consultants' econometric results are statistically insignificant and it is even suggested by the consultants themselves that one of their conclusions run against '*conventional wisdom*'. Taking these factors together, DG COMP does not consider the empirical analysis carried out by the Erasmus University consultants to be a sound basis for any further policy considerations."[25]

The Discussion Paper goes on to comment that conclusive proof of a casual link between Conference practices and rate stability is not achievable: "it is apparently practically impossible to provide conclusive economic evidence in this regard".[26]

18. Two connected comments on the Discussion Paper seem appropriate at this stage. First, DG IV rejects both the analysis of its own consultants (based on some, albeit imperfect data) and ELAA's offer to provide further individualized and detailed information. No alternative data are provided, and the argument, while ostensibly economic, ends up appearing doctrinal, if not doctrinaire. At the same time (and secondly) DG IV, while ostensibly rejecting approaches based on the balance of proof, in effect reintroduces these by the back door. Thus it is for ELAA to establish "a causal

[25] DG COMP, Discussion Paper, para 65.
[26] Ibid., para 67.

link with the provision of reliable services",[27] failing which—it is said—the Treaty demands the abrogation of Council Regulation 4056/86.

19. In its Discussion Paper, DG IV also proposes the deletion of Article 9 of Regulation 4056/86, which allows provisions to be negotiated to avoid conflicts of laws between different countries in relation to shared trades. It does so on the ground that conflicts of laws will not arise because antitrust exemption is not a requirement of the laws in those countries but rather a favourable exception: "[a] conflict of laws would arise only when one jurisdiction requires something that another jurisdiction prohibits".[28] Again the discussion is tilted in the direction of the result DG IV apparently seeks to achieve—in effect, a lowest common denominator approach and a "false reversion" to general regulation of conferences under standard competition law principles. (I say a "false reversion" because historically conferences have always required special treatment, and the liner trade has always been treated as raising special issues in all relevant jurisdictions.) This is to take a narrow and formalistic view of what amounts to a conflict of laws or regulations. If Asia, Australasia and North America maintain their existing positions—for example on discussion of forward rates—there would be a practical conflict: EU law would prohibit in its inwards trades what the law of the exporting State specifically permits and envisages in its export trade. To say in such a case that carriers may obey both laws by avoiding conferences and discussion agreements is simply to assert that EU law is to trump.

20. Discussions between the European Commission and affected entities including ELAA are continuing on a confidential basis. There is about to be a change-over in the Commission, with a new responsible Commissioner and inevitable delays. An informed prognosis would be that the outcome of these discussions—leading to a further consultative paper, proposed legislation, reactions by Member States (a number of which have not so far been disposed to agree with the position of DG IV), etc. will drag on, as a minimum, until the second half of 2005. In the event that significant changes

27 Ibid., para 70.
28 Ibid., para. 151.

are made there will likely be an interim or phase-in period (perhaps of the order of several years). Despite DG IV's confidence that conflicts of jurisdiction will not arise, conferences engaged in the Europe-North America trades in particular will need to review their arrangements so as to be able to comply with all applicable laws. The process can only be described as still embryonic and highly uncertain—*a fortiori* eventual outcomes are still highly uncertain. One real possibility (to put it at its lowest) is the retention of special provision for conference shipping, even if its content may differ from Regulation 4056/86 in important respects. What is virtually certain is that EU law will continue to make distinct and special provision for consortia and alliances (which are not covered by Regulation 4056/86). Thus aspects of the regulatory coverage of Part X of the Australian Act will survive in EU law *in any event*.

Options for Australia in Present Circumstances

21. It is against this background that the position for Australia needs to be assessed. Overall it does not seem that this is the time for Australia to act unilaterally, with charter rates at record levels and increased disparities within trades. The majority of Australia's liner trade is now with Asia, not Europe, and it is premature to allow speculations about possible European developments—or still more speculative assumptions about US responses—to influence Australian decisions *at this stage*. No doubt it may be possible to propose specific improvements to Part X, but it is suggested that the case for abolition has not been made out.

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18 August 2004