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Comments on
The Review of Part X of the Australian Trade Practices Act 1974

Introduction

The Singapore Shipping Association (SSA) is a national trade association representing shipowning and shipping interests in Singapore. Currently, it has 241 member companies of which 173 are Ordinary and 68 are Associate Members. The SSA membership covers a very broad spectrum of the shipping industry in Singapore. Singapore has the sixth largest merchant fleet in the world with a gross tonnage of more than 27 millions. The Association represents a number of national and foreign shipping lines that trade to Australia.

The Association is a member of the Federation of ASEAN Shipowners' Associations (FASA) and the International Chamber of Shipping (ICS). It is also affiliated to the Asian Shipowners Forum which comprises shipowners' associations from seven Asian regions namely, ASEAN, Australia, China, Chinese Taipei, Hong Kong, Japan and Korea.

The Issue

On 23 June 2004, the Australian Parliamentary Secretary to the Treasurer, the Hon. Ross Cameron MP announced that the Productivity Commission (PC) was instructed to undertake a review of Part X of the Australian Trade Practices Act (1974) (TPA)

Part X of the TPA is the regulatory regime for international liner cargo shipping operations in Australia. It describes the conditions under which international liner cargo shipping operators are permitted to form conferences to provide regular, reliable and lower cost shipping services. In particular, Part X offers conferences limited, conditional exemptions from the general provisions of the TPA

On 22 October 2004, the PC released a draft report for public consultation and input.

In the draft report, the PC considers two ways in which the current arrangement could be amended to improve outcomes, namely:

1. repeal Part X and, as occurs for other industries, rely on authorization under Part VII of the TPA, under which agreements are assessed individually on the basis of their net public benefit. This is the PC's preferred option; or

2. modify Part X to promote and protect confidential individual service contracts between carriers and shippers and either (i) register only agreements that do not contain provisions to discuss or set prices and/or limit capacity offered on a trade route, or (ii) exclude discussion agreements from eligibility under Part X. Agreements not eligible for registration under Part X would remain eligible for authorization under Part VII.

The draft report had made further reference to the OECD Secretariat's report published in 2002 which reviewed the need for special regulation of conference agreements, and proposed three principles. The report, regretfully, did not enjoy the broad support of the OECD member governments and was severely criticized by the shipping and trading community.

The SSA's Case Against the Repeal of Part X of the Australian Trade Practices Act (1974)

The SSA has had the opportunity to review and consider the draft report. It is now pleased to submit its comments on the draft report as follows:

- The PC has provided several arguments in support of the options to either repeal Part X or to modify it. In all respects, the SSA has found these arguments not only unrealistic but also seriously flawed.

- The current immunity system, contrary to the draft report, is very useful for the shipping industry as well as the whole trading industry, including shippers. In the Australian liner trade, ocean carriers are able to perform their business effectively and efficiently, and the market is highly competitive without regulatory conflicts with its major trading partners.

- Under the current regime, it should be noted that Australian importers and exporters have largely benefited from the robust service options and reasonable rates with the trade expanding significantly over the years. Between 1994 and 2004, the number of shipping lines offering services between South East Asia and Australia has increased significantly.

- There are also specific provisions under Part X that ensure Australian flagged ships are not unreasonably hindered or discriminated against.

- The SSA holds the view that a stable regulatory environment is indispensable for the shipping industry to provide reliable and regular services, and a long term service commitment to the shippers and the trading community. The existing Part X therefore provides this stability.

- The SSA therefore strongly favours the retention of Part X of TPA, that is, maintaining a regime for liner shipping under Australian competition rules which will allow the preservation of the conference system and Discussion Agreements.

- A repeal of Part X, the SSA fears, would lead to destructive competition among the ocean carriers and therefore seriously disrupt the smooth flow of international shipping and trade. Such competition may also result in an oligopoly situation in liner shipping that would bring several negative consequences for the whole trading industry, such as fewer service choices, reduced efficiency and quality in services.

- It will also seriously weaken shipowners' ability to invest in new ships and other shipping and trade infrastructures that the global economy is so greatly dependent upon. Considering the high proportion of specialized equipment (ie refrigerated containers) required for the Australian trade, this would be especially damaging for Australian exports.

- The growing demand for ocean transportation, especially in the Asia Pacific, will far exceed its supply, thus creating greater imbalance and instability to the liner trade.

- If the Government were to accept the preferred option contained in the draft report, then a much more unstable operating environment would be created as it is clear that the authorization provisions are more uncertain, lengthy, time consuming and expensive when compared to the public benefit tests already contained in Part X.

- Whilst the Australian Government is considering imposing a time limit of months for any authorization application to be decided, the actual period could be much longer if it goes to appeal. This would be untenable, bearing in mind that operational consortia and slot sharing agreements between carriers, could well require such authorization, and not just price setting agreements. In the carriers' view, such authorization would not be a viable alternative.

- Abolition of Part X would be inconsistent with the regulatory regimes of Australia's major trading partners.

Conclusion

The SSA hopes that these brief comments are useful. In conclusion, we strongly urge that Part X of the Trade Practices Act 1974 be retained.

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