

14 October 2022

The Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

via email: productivity.inquiry@pc.gov.au

Dear Sir/Madam

Australia's Maritime Logistics System

We welcome the opportunity to comment on the Productivity Commission's inquiry into Australia's Maritime Logistics System.

Small businesses make up 62% of all export businesses in Australia.¹ However, this does not include the number of small businesses who provide services that support the maritime logistics system, such as landside transport operators moving cargo to and from ports.

Many small businesses face ongoing challenges in cross-border trade as a result of underlying structural issues that have been exacerbated by the COVID-19 pandemic. The following issues require further evaluation from both industry and government to ensure cross-border trade remains efficient and competitive for small business to continue to operate in this sector:

- 1. The increasing costs for cargo owner's lack transparency and consistency, with no option to negotiate terms for small business.** Cargo owners pay several known costs such as freight charges, stevedore levies and container park fees. However, additional surcharges can be levied against cargo owners including:
 - if the cargo is re-routed;
 - Terminal access charges;
 - port congestion charges; and
 - fuel surcharges.

These additional costs are paid for by the small business and can be excessive, lacking consistency and transparency for the justification of the surcharge.

Cargo owners do not have direct contractual relationships with ports, stevedores or container parks and have limited market power to negotiate the additional charges that are usually required to be paid prior to the release of the cargo.

¹ [Australian Bureau of Statistics](https://www.abs.gov.au/statistics/economy/international-trade/characteristics-australian-exporters/latest-release) defines small exporter as having fewer than 20 employees and annual turnover less than \$2m and exports of less than \$2m during the reference period. [Characteristics of A...~https://www.abs.gov.au/statistics/economy/international-trade/characteristics-australian-exporters/latest-release](https://www.abs.gov.au/statistics/economy/international-trade/characteristics-australian-exporters/latest-release)

2. **Small businesses encounter a complex and burdensome regulatory system that is difficult to navigate and can be a significant barrier to cross-border trade.** The current regulatory system requires small business to navigate approximately 200 pieces of legislation administered by more than 30 government agencies.² This complexity is a deterrent for small business to engage in cross-border trade.

We acknowledge the Simplified Trade System as an important step towards reducing the complexity of the regulatory environment. We recommend consideration be given to a consolidated trade portal that supports small businesses to navigate regulations and understand expected decision timeframes for cross-border trade. We encourage transparency and interagency collaboration for the implementation of the Simplified Trade System to ensure small business is considered in the development and rollout of this system.

Further, we recommend a comprehensive review of the regulatory environment be considered to ensure current regulations support cross-border trade whilst protecting the safety and wellbeing of Australia's domestic industries.

3. **Unfair detention fees for the late return of shipping containers.** Detention fees are incurred by cargo owners or landside transport operators if they fail to 'de-hire' (return) shipping containers at the specified location and within the 'free' period (usually 7 days).

Currently empty container storage facilities are facing capacity constraints with landside transport operators redirected to de-hire containers at an alternative facility. Consequently, delays occur to de-hire the containers that are beyond the control of small businesses who are expected to pay the additional fees.

We encourage collaboration between industry and State governments to work on measures to address the underlying issues that are causing empty container park congestion. With consideration to addressing the unfair and excessive charges incurred by cargo owners and landside transport operators.

On 28 September 2022, the *Treasury Laws Amendment (More Competition, Better Prices) Bill 2022* (the Bill), was introduced to the Parliament. This Bill introduces a civil penalty regime prohibiting the use and reliance on unfair contract terms in standard form contracts. However, Part X of the *Competition and Consumer Act 2010* (CCA), provides various exemptions for shipping contracts including exemptions relating to unfair contract provisions. We suggest consideration be given to a review of Part X of the CCA as recommended by the 2015 *Competition Policy Review*.³

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Donna Boulton

Yours sincerely

The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman

² Department of Home Affairs, Submission "Inquiry into the trade system and digital economy", 2018, p.4

³ [Competition Policy Review Final Report, March 2015 \(treasury.gov.au\)](https://www.treasury.gov.au/competition-policy-review)