

**Liner Shipping Services Ltd**

**submission to**

**THE PRODUCTIVITY COMMISSION**

**REVIEW OF**

**PART X OF THE TRADE PRACTICES ACT 1974**

This submission has been prepared by Liner Shipping Services Ltd on behalf of the following shipping Lines:

- ANL Container Line Pty Limited
- Australia-New Zealand Direct Line
- APL Lines (Australia)
- Cho Yang Shipping Co Ltd
- Columbus Line
- Compagnie Generale Maritime
- Compagnie Maritime Marfret
- Consortium Hispania Lines
- Contship Container Lines
- Evergreen Marine Corporation
- Hanjin Shipping
- Hapag-Lloyd Container Line GmbH
- Kawasaki Kisen Kaisha Ltd
- Lloyd Triestino de Navigazione Societa per Azioni
- Maersk Australia Pty Ltd
- Malaysian International Shipping Corporation Berhad
- Mitsui O.S.K. Lines Ltd
- Nippon Yusen Kabushiki Kaisha
- Orient Overseas Container Line Ltd
- P&O Nedlloyd Ltd
- P&O Swire Containers Ltd
- Pacific International Lines (Pte) Ltd
- PT Djakart Lloyd
- RCL (Australia) Pty Ltd
- Wilhelmsen Lines AS
- Yangming Marine Transport Corporation
- Zim Israel Navigation Co Ltd

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## EXECUTIVE SUMMARY

Approaching this review, it is important that the Government determine first its objectives for its international liner shipping policy, and then examine the processes and system of regulation, if required, that would facilitate and support the achievement of those objectives.

Some of these objectives are already clearly spelt out in Part X:

- “a) 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;
- b) to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and territories; and
- c) to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade.”

In addition, it is recommended that there be another objective: “To develop and support the international liner shipping environment which will lead to a competitive advantage for Australia.”

In fact, there is another objective buried in Part X, but it nevertheless protects and supports Australian liner exporters, and that is:

- “Outwards 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.”

A review of the operation of Part X over its thirty-three year history will show that these 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, at a time when freight rates are at an all-time low and level of services at an all-time high.

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 around three and a half billion dollars (being the estimated written-down book value, not replacement value) 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 and the desire by the liner exporters of our Asian neighbours for similar legislation.

- 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. In the last ten years there have been only three major and formal investigations by the ACCC, and two of those have involved one trade area only. The Part X framework which encourages commercial resolution of disputes is well geared to meet foreseen challenges in the international liner shipping market; particularly if amended in the manner suggested in this submission.
- c) **Efficiency.** Part X is a relatively low-cost form of regulation, with A\$570 registration fee per Agreement, and it is understood that there are approximately sixty Agreements registered at the present time, i.e. a total of A\$34,500 compared to A\$450,000 if authorisation had been sought for each of those Agreements at A\$7,500 per authorisation. Given the monitoring and oversight by the Australian Peak Shippers Association, Part X provides much needed transparency of Conference/Consortia operations, particularly in terms of minimum service levels and the impact on shippers of day-to-day operations.

### **Main arguments for retention of a modernised Part X regime ...**

Member Lines of Conferences have a clear and long record of commitment to the Australian trades which requires careful fostering because of the industry's particular specialist characteristics. International liner shipping does have special economic characteristics, which are explained in detail in the study commissioned by LSS Ltd and carried out by Meyrick & Associates, which forms part of a separate submission to this inquiry. If the bus-like service provided by these unincorporated joint ventures is to be continued, a special regulatory regime is required to facilitate such an operation.

Liner exporters depend on the transport infrastructure provided by Conferences which adds value to their products overseas, and use is even made of the international agency network of Conference member Lines when developing new export business.

The history of the international liner shipping industry demonstrates that Conferences are indeed efficiency enhancing and have therefore become an established part of the way in which the shipping industry operates internationally, and is accepted as such by countries which have similar competition laws to Australia. There have been three major reviews of this legislation since 1966 and prior to the current review, and in each of these previous occasions the Government has assessed favourably the public benefits which flow from Conference arrangements.

Exemptions from Part IV of the Act are the minimum necessary for the provision of those services most desired by international liner exporters; certain Sections of Part IV (e.g. Section 46 – abuse of market power) apply, and there is a high level of competition in the market, with Conferences (as traditionally defined) carrying some 55 percent of Australia's overseas liner trades. With an investment of around A\$120 million for one ship and its equipment, any shipping operator is unlikely to continue to invest multiples of this investment factor without at least the confidence of a legislative regime that provides normal international trading flexibility.

In this submission, member Lines of LSS recommend the following reforms to modernise the existing Part X regulatory regime, and in order to ensure that it continues to meet the challenges and requirements of the current international liner shipping scene and to increase the connectivity with the objectives of Australia's national competition policy:

- a) To examine the existing Part X provisions to determine where they can be streamlined or modernised, e.g. Service Contracts replacing Loyalty Agreement provisions.
- b) Provide for a clear exemption in Part X for the collective negotiation of stevedoring contracts as recommended by the 1993 Part X Review Panel. Sections 10.14 and 10.22 should be modified to make it clear that the necessary limited exemptions from Part IV clearly extend to intermodal rate making by Conferences, on the basis that shippers have the clear choice not to use such services outside of the terminal gate if they so wish. Costs forming part of the terminal-to-terminal movement, such as Port Service Charges and Terminal Handling Charges, should, like other charges, be able to be set collectively if there is any doubt as to the necessary exemptions being available as suggested by the ACCC.
- c) To determine if the existing Agreement registration procedures cannot be significantly streamlined and made more efficient.
- d) Provision should be made for the designation of a Peak Importer Body to collectively consult with Lines on inland transport arrangements and costs in Australia.
- e) Adoption of the recommendation of the 1993 Review Panel regarding mediation procedures, which hopefully could be included in an Industry Code on dispute resolution procedures negotiated with the Australian Peak Shippers Association.

#### **Authorisation under Part VII of the TPA – not a viable option ...**

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 uncertainty 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 arrangement is altered there would be a need for a new authorisation.

Difficulties would be experienced in obtaining the necessary authorisation for the ability to set common rates, which underpins Conference and Consortia arrangements.

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.

The removal of Part X, and if authorisation was not granted, would most likely have the following implications:

- a) Vessels serving a particular trade area would arrive in Australian ports at a similar time and export freight rates would drop even further as shipping Lines scrambled for available cargo. Equally, in the following period when there was a shortage of ships there would be “opportunistic” pricing where the only shipping available would demand very high freight rates. Given this bunching and gapping of vessel arrivals, there would be considerable gyrations in price depending upon when the vessel arrived on the berth.
- b) Those requiring specialist services, especially exporters of refrigerated products, would be particularly vulnerable in this situation as such competition could force shipping Lines to concentrate on the lower cost commodities, i.e. those making the highest contribution.
- c) The pure application of Australia’s anti-trust laws would conflict with most of the laws of our major trading partners, and the only alternative of developing bilateral arrangements to reduce this conflict would not be seen as being in Australia’s best national interest. There is simply no reason to withdraw a legislative structure that has proved to be both pro-commercial and pro-competitive. There are no substantial barriers to entry and exit, and any problems that arise can be adequately dealt with in the existing Part X, which has proved adequate to safeguard the interests it was designed to protect.

In the November 1998 Draft Report by the National Competition Council reviewing Sections 51(2) and 51(3) of the Trade Practices Act, there is a recommendation that the exemption in Section 51(2)(g), which provides an exemption from Part IV of the Act for a provision of a contract, arrangement or understanding that relates exclusively to the export of goods from Australia or to supply of services outside Australia, should be retained in its current form.

Alternatives were assessed against the following objectives of the exemption:

- a) To facilitate Australian exports of goods and services.
- b) To reduce any uncertainty associated with the application of the TPA to exports.
- c) To place Australian exporters on an equal footing with foreign exporters that enjoy the same immunity from their national competition laws.

The Council considered that the authorisation and notification procedures under Part VII would not achieve the objectives of the exemption as well as the current exemption, and the Council also considered that non-legislative means could not achieve the overall objectives of the exemption.

**There is a clear case for treating Part X in the same way.**

## 1. INTRODUCTION

1.1 **Part X has worked remarkably well since its inception under a Coalition Government in 1966 in terms of meeting the many challenges faced by the industry and liner exporters since that time and, in fact, has been seen as model legislation for possible emulation in many of our Asian trading partner countries.**

1.2 The twenty-seven member Lines of the Conferences, Consortia and similar Associations represented by Liner Shipping Services Ltd (LSS) (at Attachment A is a list of those member Lines, split by geographic trade area), collectively carry around 55 percent of Australia's international liner trade, or some 33 billion dollars annually, excluding those member Lines who are parties to Discussion Agreements. Including those Lines, approximately 70 to 75 percent of Australia's international liner trade would be covered, but the level of participation varies considerably between individual trade areas.

1.3 It is the clear view of those member Lines that the operation of Part X of the Trade Practices Act has not only produced highly competitive outcomes in terms of freight levels for Australian shippers, but has also clearly provided a transparent process (given the high level of communication between exporters and ship operators required by Part X) in terms of Conference behaviour that would not be apparent under alternative regulatory regimes. Part X has been a relatively cheap but effective form of light-handed regulation that has met what is understood to be the objectives of Australia's international liner shipping policy as set out in Part X, viz:

- "a) To ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and at freight rates that are internationally competitive;*
- b) To promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and territories;*
- c) To ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade."*

1.4 These objectives are backed up by a very important public interest test that is clearly spelt out in Part X that outward 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 for shippers who use, and shippers who may reasonably be expected to need to use, the services."*

1.5 This review of the operation of Part X will show that these objectives, and the public interest test, have been fully met. 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 liner shipping policy, but also that it is keeping pace with the rapidly changing international liner shipping scene.

### **A brief history of Conferences ...**

- 1.6 Historically, the provision of scheduled shipping services started when the innovation of steam propulsion enabled carriers to give their shippers guaranteed 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.
- 1.7 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.
- 1.8 There are now about 300 Conferences throughout the world. 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".
- 1.9 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.
- 1.10 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.

- 1.11 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.
- 1.12 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".
- 1.13 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.
- 1.14 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.
- 1.15 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.
- 1.16 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.
- 1.17 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.

- 1.18 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.
- 1.19 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.
- 1.20 The reviews of Part X are outlined later in this submission, but the only major amendments were enacted in 1989.
- 1.21 Over the years, Conferences have changed to meet changing trading requirements and this process has accelerated in recent years. Also, over the last five years, the perceptions that Conferences were not customer oriented have changed and competitive sources, especially via transshipment and the overall influence of globalisation have combined to significantly reshape Conference operations. Today, there are no deferred rebates, common rate setting is the exception rather than the rule (but the importance of being able to set common freight rates remains), the worldwide regulatory system is changing in terms of its application, but not in terms of providing the necessary and limited exemptions from anti-trust legislation for these institutional structures to remain.
- 1.22 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.

- 1.23 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 Attachment B. The industry would define a shipping Conference as comprising groups of major shipping Lines and individual 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 set freight rates and do so periodically according to market conditions and requirements.
- 1.24 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.
- 1.25 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 transshipment 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.
- 1.26 The EU Regulation 870/95 actually defines 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.”
- 1.27 The distinction in relation to price fixing is an important one but most, if not all Consortia, in the Australian international liner trades operate under the umbrella of Conference or Discussion Agreements. The ability to set freight rates provides the confidence and trust particularly necessary for a consortium to deliver the real and easily identifiable public interest benefits that they do in terms of facilitating Australia’s international liner trade. Whilst by no means universal, it would be true to say that common rate setting would be more prevalent within the consortium framework than it is, at present, within the overall Conference structure. That is not to say there is not independent pricing within Consortia under present conditions, but that there is a greater encouragement to charge common prices than exists under other institutional structures, and this undoubtedly occurs.

- 1.28 The repeal of a Type-X 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 so far. Any attempt to simply apply the existing provisions of Part VII would be unworkable and a clear rejection of international comity. This issue is addressed in more detail further on in this submission.
- 1.29 In the Issues Paper circulated by the Independent Committee of Inquiry into a National Competition Policy Review,<sup>1</sup> 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."
- 1.30 It is a basic tenet of this submission that the current operations of international liner shipping in the Australian trades meet these four basic criteria; namely that it is a 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. LSS has commissioned Meyrick & Associates Pty Ltd to make a submission to this inquiry, 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.
- 1.31 Any regulatory regime can be improved, provided the improvement meets the basic criteria for regulatory regimes of this nature as set out in this submission, then they

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<sup>1</sup> Issues Under Consideration of the Independent Committee of Inquiry into a National Competition Policy Review (the Hilmer Inquiry), Feb. 1993, pp. 3 & 4.

would have the support of Conferences and Consortia, and a number of amendments to the existing Part X are proposed which will improve its operation.

## 2. INTERNATIONAL LINER SHIPPING PATTERNS/OPERATIONS/COMPETITION

- 2.1 At Attachment C there is a description of the vessels employed and service characteristics of Conferences and Consortia, along with details of the competition over the period since the last review in 1993 to 1998/9. It should be noted that this competition arises from a number of sources, especially transshipment services. In other words, there may be few direct competitors but there can be members of Conferences in other trade areas providing competition via transshipment. There is also the competitive influence of freight forwarders and Non-Vessel Operating Common Carriers who, by consolidating shipments, can present large volume opportunities to individual shipping Lines, and to a minor extent there is also the influence of air transport and tramp shipping, e.g. such as conventional reefer shipments. Any discussion of competition prevailing in the international liner trades must also include the degree of contestability that applies, and this is well set out in a paper prepared for the Bureau of Transport Economics by Dr. J.E. Davis.<sup>2</sup>
- 2.2 It is important to recognise that the vessel capacities outlined in Attachment C are optimum and do not take into account deadweight limitations, particularly in the Northbound trades from Australia, and the fact that some of this capacity would be used for way port trades and for other geographic destinations than those stipulated.
- 2.3 Changes to the Australian international liner trades are reflective of worldwide developments, such as the creation of Alliances and megacarriers, the growth of Discussion Agreements, the building of larger container vessels and growth in transshipment operations, especially in the North South trades as feeder vessels for the large mother vessels in the East West trades.
- 2.4 Alliance membership is as follows:

<b>ALLIANCE MEMBERSHIP</b>	
Cover World's 3 major trunk routes - Transpacific, Transatlantic and Asia/Europe	
<u>Grand Alliance</u>	NYK, Hapag-Lloyd, MISC, OOCL, P&O Nedlloyd
<u>New World Alliance</u>	Hyundai Merchant Marine, MOL, American President Lines (APL)
<u>United Alliance</u>	Hanjin, Cho Yang, DSR - Senator, United Arab Shipping Coy.
<u>Partnerships</u>	a) COSCO, 'K' Line and Yangming Marine b) Maersk / Sea-Land.

fig. 1

- 2.5 This has not directly translated into identical co-operative arrangements in Australia, but these have been, nevertheless, an influence (for example, NYK left the ASA consortium to join P&O Nedlloyd in the AAX consortium) and there has been some cascading of vessels into the Australian trades displaced in the East West trades by larger vessels. This has had some effect upon the size of vessels in the Australian

<sup>2</sup> BTE Occasional Paper 78, 1986 'Contestability in Australian Liner Trades', J.E. Davis.

trades but new buildings introduced have also been larger, in some cases significantly larger than their predecessors.

2.6 To put the Australian trades in perspective, it is interesting to contemplate the following:

CARGO VOLUMES 1994	
	TEUs
Trans Pacific	7.47 m.
Trans Atlantic	3.04 m.
Asia / Europe	4.90 m.
Intra Asia	6.73 m.
<u>ALL of Australia</u>	2.10 m.

Source: data derived from TANAKA, 1996 and published in *Maritime Studies* Jan/Feb. 1998.

fig. 2

2.7 The Australian coastal and international liner trade of approximately 2.74 million TEUs (Twenty Foot Equivalent Units) accounted for approximately 1.67% of the estimated world total of 163.7 million TEUs in 1997 (i.e. port movements).  
(Source: *Containerisation International Year Book 1999*.)

2.8 Another useful source for this type of material is *the UNCTAD Secretariat Review of Maritime Transport 1997 – UNCTAD/RMT(97)/1*.

2.9 This is not to say that the Australian trades are not important, but rather that small volumes create special problems for shipowners, shippers and regulators.

2.10 It is clear that Lines who are members of Agreements registered under Part X provide greater additional refrigerated capacity than those who are not party to such Agreements. As an example of the additional costs involved, it should be noted that the cost of a 20 ft refrigerated porthole container is around US\$9,500 compared to approximately US\$2,500 for an ordinary 20 ft general purpose container. Investment costs for a blown-air, refrigerated slot over and above the slot for a dry container is approximately US\$40,000 (a pure dry slot being approximately US\$18,000). A blown-air vessel is one that provides its own cold air and the refrigerated container does not have its own engine, which is the opposite of an integrated refrigerated container which is really similar to a large refrigerator. The replacement cost of, say, a 2,500 TEU vessel with no refrigerated capacity, either blown-air or points for refrigerated containers (which requires a vastly increased generator capacity on the vessel) is about US\$45 million. The replacement cost of the same sized vessel with 1,000 reefer blown-air containers would be approximately US\$85 million (without equipment). In addition, many of these refrigerated containers have to be positioned back to Australia empty; there are additional maintenance and cleaning costs, and high monitoring costs onboard and onshore. Reefer towers in terminals cater for blown-air containers and the integrated refrigerated containers are attached to special electrical outlets. Marine Clip-On Units are also provided to attach to insulated containers for onboard carriage, and each of these MCOUs would cost approximately US\$15,000.

- 2.11 It will be seen from Attachment C that vessels are considerably larger than they were during the previous review in 1993. Subsequently, there has also been an increase in container exchanges.
- 2.12 The creation of megacarriers is widely known, especially the merger of P&O Containers and Nedlloyd, and the subsequent takeover by that group of Blue Star Line and Tasman Express Line; the acquisition of American President Line by Neptune Orient Line; the purchase of Contship and ANZDL by CP Ships; and the purchase of Safmarine by Maersk. In addition, Evergreen purchased Lloyd Triestino and CGM has purchased ANL's liner shipping business, and the proposed merger between Wallenius Lines and Wilhelmsen Lines has recently been announced. This latter company will be the world's largest supplier of vehicle and RORO transportation services.
- 2.13 It is instructive to review the size of the top twenty container shipping operators (by total TEUs) as at 1 September 1998, and the top container shipping operators on the basis of the additional tonnage contracted for as at that date.<sup>3</sup>

Top Container Service Operators (as at 1st September, 1998)				
Carrier	Total TEUs	No. of Vessels	Tonnage Contracted	
			No. of Vessels	Total TEUs
Maersk	346,133	161	24	81,256
Evergreen/Uniglory Marine Cor	280,237	128	26	89,404
P&O Nedlloyd	250,858	111	9	39,630
MSC	220,745	134	2	7,900
Hanjin	213,081	67	1	5,300
Sealand	211,358	91	-	-
COSCO	202,094	128	18	24,684
APL	201,075	76	-	-
NYK	163,930	74	-	-
MOL	133,681	65	5	10,000
Hyundai	116,644	36	-	-
ZIM	111,293	62	-	-
CP Ships	105,322	55	-	-
CMA-CGM	91,600	61	2	4,400
Hapag Lloyd	90,879	27	7	33,600
OOCL	90,063	33	2	11,000
K Line	89,917	44	2	6,912
Yangming	79,840	32	5	26,000
United Arab Shipping Co.	59,331	52	2	7,600
Safmarine	55,584	45	-	-
MISC	-	-	4	4,364
Kien Hung	-	-	4	6,000
National Shipping Coy. of Sauc	-	-	3	13,200
Norasia Line	-	-	8	11,200
OT Africa Line	-	-	2	3,174
Cheng Lie Navigation	-	-	2	2,942
Wan Hai Line	-	-	3	4,500

fig. 3

- 2.14 It is also interesting to rank international liner shipping operators according to their forecast liftings for 1998.<sup>4</sup>

<sup>3</sup> Nov. 1998 edition of 'Containerisation International', pp. 51-55.

<sup>4</sup> Nov. 1998 edition of "Containerisation International" pp. 51-55.

Carrier	TEU Forecast 1998
COSCO	3,500,000
Evergreen/Uniglory	3,488,000
Sea-Land Service	3,200,000
Maersk*	3,100,000
P&O Nedlloyd	2,500,000
APL	2,100,000
Hanjin Shipping	2,000,000
NYK Line	1,670,000
OOCL	1,600,000
Mediterranean Shipping Co.	1,600,000
Mitsui OSK Lines	1,410,000
Hyundai Merchant Marine	1,500,000
Hapag-Lloyd	1,300,000
Yangming Marine Transport Corp	1,170,000
CMA-CGM	1,100,000
Zim Israel Navigation	1,050,000
K Line*	950,000
CP Ships	1,100,000
Safmarine & CMBT Lines	675,000
United Arab Shipping Co	500,000

*fig. 4*

2.15 It would also be true to say that there has been an increased reliability of sailing schedules since the major industrial dispute in April/May of 1998. It is understood that around 70 percent of current stevedoring business, at least as far as the major stevedores are concerned, is now involved with berthing windows.

### Competition ...

2.16 There is currently an extremely high level of competition in the international liner shipping trades involving Australia. This was recognised by the ACCC in its report on the proposed price increase for towage services in Melbourne, when the Commission stated, "The market is highly competitive in terms of price, transit time and frequency of service, however, it is characterised by low freight rates, overtonnaging and severe cargo imbalances." Nevertheless, a very high level of service has been able to be maintained as far as Australian shippers are concerned.

2.17 Over the last five years, Conference liftings (covered by Conference Constitutions) have remained steady around the 55 percent mark, but with the increasing popularity of Discussion Agreements that share would be increased to just over 70 percent. The best estimates LSS Ltd member Lines can make are outlined in the following table.

#### **Participation in the Liner Trades with Australia**

(for member Lines refer Attachment A)

Trade	Type of Agreement	% of Total Liner Trade	
		Northbound	Southbound
Aust/Europe	conference	65	63
Aust. South & East Coast/Japan	conference	54	62

	consortium	49	58
Aust. South & East Coast/Korea	conference	35	37
	consortium	32	34
Aust. South & East Coast/Taiwan	conference	85	83
	consortium	44	38
Aust. South & East Coast/Hong Kong	conference	34	41
	consortium	19	25
Aust/S-E Asia	conference	**	**
Aust/Middle East Gulf/West India/Pakistan/Sri	conference	65	30
Aust/USA (US ContainerLine Assoc.)	conference	65	57

\* This is the best estimate that Conference and Consortia member Lines of LSS Ltd can make of the total liner trade and their participation in 1998 (in terms of TEU carryings) for the traditional Conference, but the percentages would increase in certain trades if Discussion Agreements are taken into account. It is important to appreciate that these percentages are estimates.

\*\* There is only a Discussion Agreement in this trade.

*fig. 5*

2.18 There are Discussion Agreements in the Australia to Japan/Korea and East Asia, South-East Asia, North American trades as well as to the Pacific Islands. They are also common in other parts of the world, especially involving the US trades. There are seventeen member Lines of the Australia/South East Asia Trade Facilitation Agreement, which is the largest Discussion Agreement. These Discussion Agreements are differentiated from Conference Agreements, or, more accurately, Conference Constitutions, by employing a mechanism of rate setting via a non-binding consensus, that is there is no compulsion to set common rates, and even if agreement is reached a member Line is not bound by such agreement on the basis that he subsequently notifies his colleagues. They also tend to have very short periods of notice of termination or withdrawal compared to the types of Agreements upon which greater investment is dependent, such as Consortium Agreements that have usually reasonably lengthy periods prior to withdrawal or termination to support the mutual investment in the service. It is important to recognise that Discussion Agreements do provide for minimum service levels which, coupled with the aim of stabilising trades, are significant commitments by member Lines to the trade.

### Freight rate comparisons ...

2.19 Australian shippers enjoy extremely competitive freight rates in both Australia's outwards and inwards trades. As will be seen from the charts below, there has been a significant downward trend in the last few years. As reported in the media on 1 April,<sup>5</sup> the member Lines of the Australia/South East Asia Trade Facilitation Agreement were seeking to apply a new A\$600 per TEU minimum rate, being a modest increase from prevailing average rates of A\$500-550 per TEU, although the President of the Australian Peak Shippers Association, Mr. Frank Beaufort, has been reported as saying that in his view the rates were now closer to A\$400 per TEU. It was hoped to provide a minimum refrigerated rate of A\$2,340 compared to rates prevailing some two years earlier of approximately A\$3,500. It was also mentioned

<sup>5</sup> Daily Commercial News, dated 1 April 1999.

in that report that rates had declined between 40 and 60 percent between 1996 and 1998.

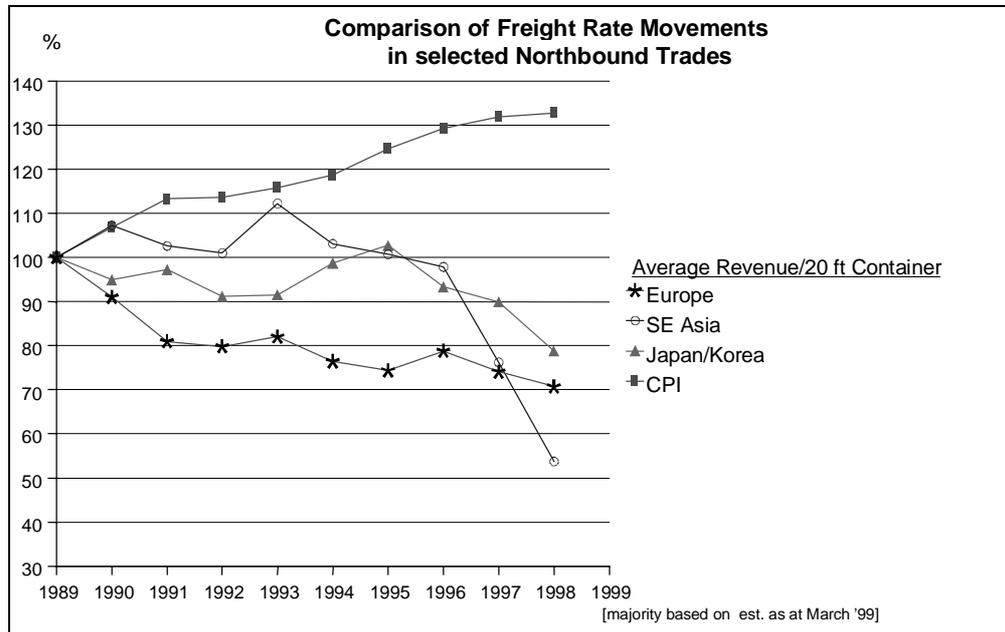


fig. 6

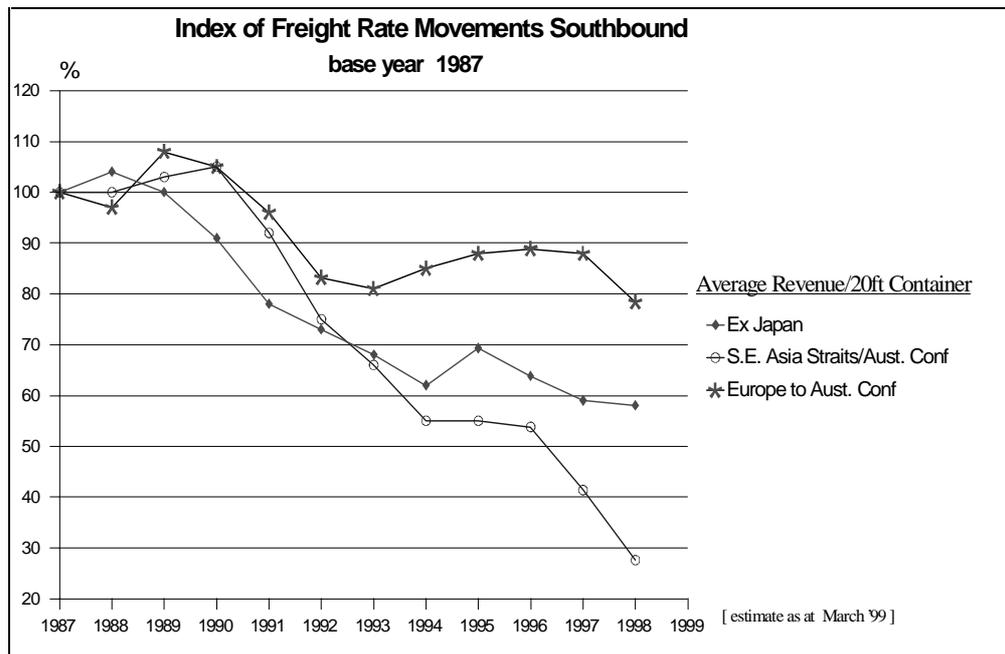


fig. 7

2.20 Below is the freight rate index for bulk packed meat in cartons in the Australia-USA trade, which is the highest cargo volume mover, and the 12 November 1998 rate is approximately 75 percent of the 1 October 1993 rate. Current rates are around the A\$5,600 level. In September/October 1994 there was a freight rate war which forced rates down to almost 40 percent of what they were a year earlier. Meat exporters expressed serious concern at that time on the possible impact on services.

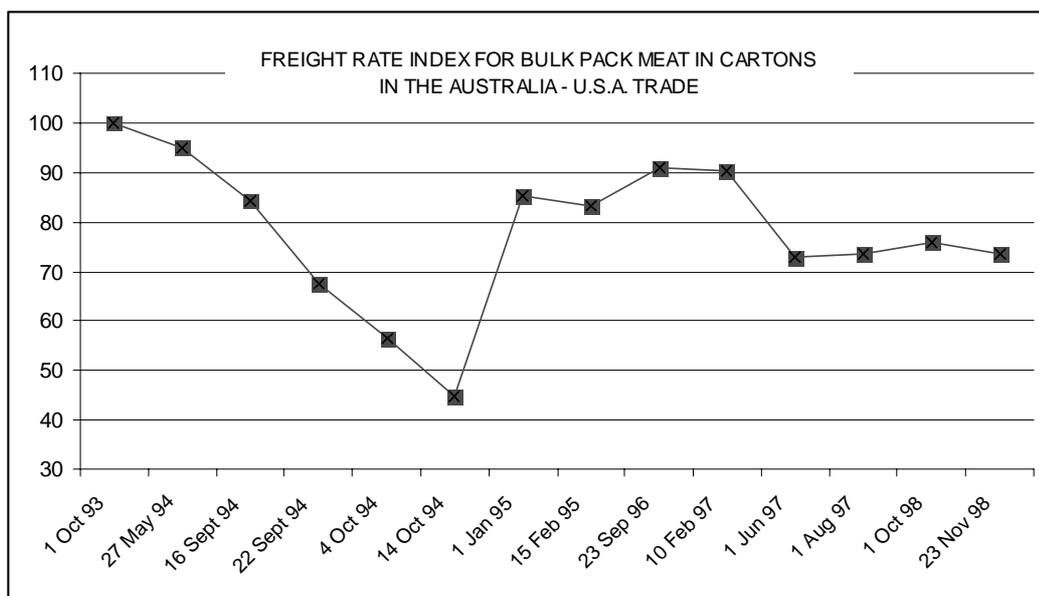


fig. 8

2.21 In this table a comparison is made with international rates using the same commodities, but taking into account different distances. The difficulties of accurately comparing rates between different trades needs to be borne in mind.

**INTERNATIONAL COMPARISON OF LINER FREIGHT RATES**

	Australian cents/tonne/km *		
	Canned Fruit	Dried Fruit	Rice
<b>Australia-Europe</b>	0.39	0.41	0.32
<b>Asia-Hamburg</b>	0.68	-	0.57
<b>US West Coast-Hamburg</b>	1.35	1.23	1.42

\*inclusive of THCs/PSCs

**Source: Liner Shipping Services Ltd , 1999**

fig. 9

2.22 In this table and chart, reference is made to rates in the major East-West trades, but overall the level of existing Australian rates compare very favourably to those paid by our major competitors.

% Change in Freight Rates as at selected dates from 1st Quarter 1996							
Qtr/Year	US/Europe Eastbound \$US/TEU	Asia/US Eastbound \$US/TEU	Asia/Europe Westbound \$US/TEU	Europe/US Westbound \$US/TEU	US/Asia Westbound \$US/TEU	Europe/Asia Eastbound \$US/TEU	
4Q1998	1614	1465	1308	1188	842	807	
3Q1998	1561	1397	1353	1221	998	873	
2Q1998	1477	1459	1227	1210	1015	869	
1Q1998	1472	1345	1284	1183	1119	1040	

Source: *Containerisation International* magazine: various issues

fig. 10

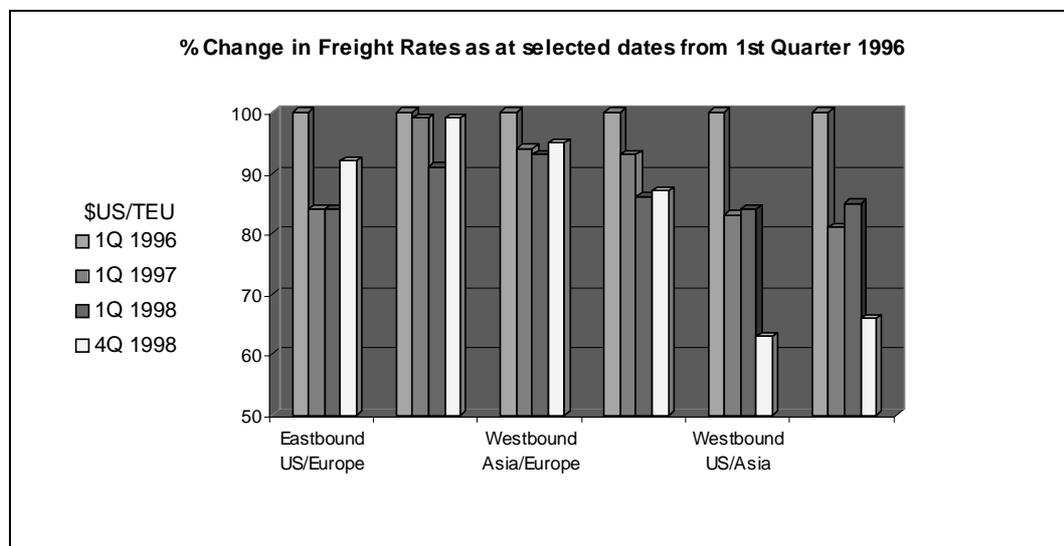


fig. 11

Source: *Containerisation International* magazine: various issues

2.23 For the Australian exporter (and importer) there is a wide choice of vessel type, service level and price to suit his particular requirements. During the 1993 inquiry, many liner exporters acknowledged the benefits of Conferences and the Part-X type regime that underpins them. There was a wide range of different types of commodities represented by those exporters.

2.24 Freight rates in the outwards trades are negotiated between Conference shipping Lines and individual shippers, or Associations, rather than by the Australian Peak Shippers Association. That body has power under Part X to require shipowners to negotiate the terms and conditions of service, but as a matter of policy has generally left freight negotiations to its individual members (with the exception of recent General Rate Increase negotiations with the member Lines of AELA). APSA has been active in negotiating surcharges, including Currency Adjustment and Bunker Adjustment Factors, Port Service Charges in Australia, and Terminal Handling Charges overseas,

as they affect the Australian outwards trades. In particular, APSA has played an important role in terms of the negotiation of minimum service levels under the provisions of Part X.

- 2.25 It is important that the process of freight negotiation is in the hands of those who will be party to the actual contract to be carried out. Intervention, even if mandated by bodies who are neither experienced in, nor directly concerned with, the specific business being undertaken, is not helpful and can be misleading.
- 2.26 Attachment C sets out the high level of competition prevalent in the Australian trades, particularly from transshipment operators. There have also been a number of recent entrants into the Northbound trades, such as the China Shipping Container Line which has begun a seven vessel service to China, Japan and the Far East from Australia, with vessels around the 1,000 TEU mark. In addition, Cape Line has introduced a three vessel direct service to North Asia via Papua New Guinea. There is undoubtedly an increasing amount of trade going via transshipment ports, particularly in the inward trades.
- 2.27 It is difficult to assess the future of transshipment and whether it will replace current direct services. There is strong support for continuation of direct services for those trades under threat, such as to Europe and to the USA, and replacement of those services totally by transshipment is not foreseen at this point in time, but developments will need to be monitored closely. Concern has been expressed in the past at the pan-Australian rate system, which was originally instigated at the request of commodity exporters and is in fact similar in days gone by to pan-European or pan-American rates. Nevertheless, the increasing tendency for Lines to independently set rates has meant that there has been a significant diminution in the application of pan-Australian rates and individual port cost transparency has increased significantly with the application of Port Service Charges and Terminal Handling Charges.
- 2.28 Lines serving the Australian international liner trades are suffering financially at the present time, which is to be expected with the prevailing very low freight rates. However, many of the companies are also experiencing very low returns worldwide as far as the liner sector is concerned. Neptune Orient Line recorded a record loss in 1998, Orient Overseas (International) Ltd blamed the crisis in Asia, overcapacity and falling rates for unsatisfactory business in 1998, and even though MISC recorded an overall profit (especially for non-liner shipping activities) it stated, "it seemed likely the generally difficult conditions, particularly facing the liner services, would continue in the near future."

### **Pooling systems ...**

- 2.29 Concern has been expressed in the past at the possible anti-competitive affect of pooling systems, and this was an issue examined in the 1993 Brazil Committee Review of Part X<sup>6</sup> and it was recommended that exemptions continue to apply for pooling Agreements.

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<sup>6</sup> Pages 87-88.

- 2.30 Since the 1993 review, at least one major revenue pooling system in the Australia-Europe trade has been replaced with a trade share agreement, but revenue pooling systems still operate extensively throughout the world and there is one in operation in the Australia-Japan/Korea and vice versa trades.
- 2.31 In the Australian trades there is an increased need for pooling, or at least trade sharing agreements, because of the greater risks arising from:
- low cargo volumes;
  - long voyages;
  - high proportion of refrigerated requirements Northbound;
  - heavy proportion of heavy cargoes Northbound;
  - peaks and troughs due to seasonality, particularly for Northbound liftings;
  - wide geographic spread of cargo demand;
  - Australia does not sit astride the world major trading routes;
  - trade imbalances.
- 2.32 In order for Lines to co-operate satisfactorily in terms of providing a joint sailing schedule and a high standard of service, it is essential to ensure that they have commonality of interest in operating such a joint service. This is achieved through the operation of a revenue pool or cargo sharing agreement in that all Lines who co-operate in the provision of a service (whether within an integrated Consortium or purely by co-operation in scheduling/slot swapping) have a common interest in the overall revenue earned by all the Lines, and therefore are more likely to be able to take joint decisions so as to maintain the overall level of service required rather than pursuing their own individual Line interests.
- 2.33 Without some form of pooling or trade sharing arrangement, there is a risk that Lines will wish to concentrate on more lower cost cargo and, hence, the availability of adequate services in some marginal areas, and for higher cost cargoes, will be put at risk.
- 2.34 In many cases, the Conference or Consortium Lines contract with individual shippers and/or shipper groups to lift a defined volume of cargo at agreed freight rates and to meet certain stipulated service obligations, on the basis that no individual Line can offer such space and service requirements by itself. In order to enter into such joint obligations, it is essential that there be a mechanism by which the benefits/obligations of the contract can be divided among the Lines involved. This can only be achieved through a pooling agreement.

### **Future trends ...**

- 2.35 As already mentioned, there is no doubt that within the next five to ten years there will be an increasing trend to megacarriers and a strengthening of the worldwide Alliances, as well as development of transshipment services.
- 2.36 Whilst there may be some tightening of the relationship between demand and capacity over the next twelve months or so, the medium term trend is still likely to lean towards surplus capacity on the basis of new vessel orderings, low scrapping rates and the market imperfections that were mentioned earlier. These types of arrangements are set

out below and more information can be provided to the Commission on these types of arrangements if required.<sup>7</sup>

**Summary Table of Maritime Subsidy Measures\***

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

\* Prepared by the US MARAD in September 1993 and it is understood that it will be updated by the end of this year.

*fig. 12*

2.37 At the moment, no individual shipowner or group of shipowners has a dominant position in the world international liner trades. Nevertheless, the middle order type international liner ship operator will find it increasingly difficult in the years to come as there will undoubtedly be an increasing concentration. However, and importantly, in the next ten to fifteen years it is not foreseen that there will be any particular dominant player or group of players. Beyond that timeframe it is more difficult to estimate, which supports the proposition that the industry does require close monitoring.

<sup>7</sup> Also refer to OECD DSTI/DOT/MTC(98)9 of 17/3/98, 'Treatment of Support Measures: Support Measures Granted by Member and Selected Non-Member Countries to their Shipping and Shipping Related Industries', February 1998 Update.

### 3. PAST REVIEWS OF PART X AND REGULATION OF INWARD SHIPPING

3.1 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.”*

3.2 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.

3.3 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.
- (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.

- 3.4 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 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.
- 3.5 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.
- 3.6 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.

- 3.7 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 of those of our trading partners.
- 3.8 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.
- 3.9 There are some important issues that are before the Commission in this review of Part X that were considered by the previous review panel, viz: the possibility of extraterritorial conflict of laws, regulation of inward shipping, handling of Discussion Agreements, whether the authorisation provisions (Part VII) of the Act should apply rather than Part X, and the issue of arbitration and mediation.
- 3.10 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."
- 3.11 A very useful consideration of these issues is found at Attachment D, which was a 1993 opinion by Professor James Crawford, Whewell Professor of International Law, University of Cambridge regarding possible conflict of law problems. He emphasises the need for compatibility between different regulatory regimes and the serious problems that could arise should Australia seek to regulate both its outwards and inwards trades.
- 3.12 At Attachment E is a more detailed description of the problems that could arise with seeking to regulate inward shipping. As pointed out by the Productivity Commission in its Report on International Co-operation on Competition Policy: "Businesses which are based on international commerce, such as air and sea transport, are often difficult to regulate using only domestic laws." The Commission concluded that Australia should be cautious about prescriptive forms of international co-operation on competition policy, but did suggest ways that Australia could co-operate at an international level to restrain anti-competitive behaviour without resorting to harmonised competition rules. Areas for further research were also listed in the report.<sup>8</sup>
- 3.13 LSS recommends that to facilitate the consultation process with importers relating to landside costs in Australia, consideration could perhaps be given to the Minister designating certain shipper bodies for the purposes of such consultations; similar to the powers given to APSA in the outwards trades (with the exception of negotiating

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<sup>8</sup> Productivity Commission Report 96/15 'International Co-operation on Competition Policy – An Australian Perspective', p.26.

minimum service levels, which would be the concern of our trading partners), thereby giving importers clear exemption from Sections 45 and 47 of the Act to engage in such consultations.

- 3.14 Similarly, the difficulty of substituting Part VII of the Act, particularly the authorisation provisions, for Part X was also raised during the review and Conference Lines' comments are contained in Attachment F. The panel's conclusion<sup>9</sup> in relation to the authorisation process was: "Where conditions exist which make it 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."
- 3.15 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."
- 3.16 In November 1998 the National Competition Council issued a Draft Report on a Review of Sections 51(2) and 51(3) of the Trade Practices Act, 1974. As a result of the review of Section 51(2)(g), providing exemption for a provision of a contract, arrangement or understanding that relates exclusively to the export of goods from Australia or to the supply of services outside Australia, the council recommended that the exemption be retained in its present form.<sup>10</sup> In making that recommendation, the Council considered that:
- *the objectives of the exemption are to facilitate exports, remove uncertainty about the application of the TPA to exports and to place Australian exporters in the same position as foreign exporters that benefit from similar exemptions;*
  - *the exemptions unlikely to restrict competition because it is unlikely to protect conduct that would otherwise breach Part IV of the TPA. The exemption, therefore, has no costs associated with a restriction on competition;*
  - *the exemption provides benefits in terms of certainty and placing Australian exporters on an equal footing with foreign exporters;*
  - *the exemption may have increased use in the future due to reforms in statutory marketing arrangements and growth in the services sector;*
  - *authorisation and notification under the TPA is not a practical alternative to the exemption; and*

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<sup>9</sup> Report of the Part X Review Panel 1993, pp. 93-100.

<sup>10</sup> National Competition Council Draft Report on a Review of Sections 51(2) and 51(3) of the Trade Practices Act, Nov. 1995, p. 75.

- *whilst non-legislative means could achieve the objective of facilitating exports, non-legislative means could not achieve the objectives of removing uncertainty about the application of the TPA to exports and placing Australian exporters in the same position as foreign exporters that benefit from similar exemptions.”*

- 3.17 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 interests. It is the Conference Lines’ view that such regulatory regimes should meet the criteria of certainty, efficiency and flexibility. 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.
- 3.18 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. The cost of a single authorisation request is \$7,500 compared with a registration fee for a Conference Agreement of \$570.
- 3.19 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.
- 3.20 It is useful at this point to quote some of the statements made in submissions to the Brazil Committee review, for example BHP(Transport) included the following comment in their submission:
- “BHP’s view of Part X is that it provides a forum for open discussion amongst shippers; an opportunity for ship operators to rationalise their services and a framework in which both sides can negotiate on a relatively equal basis, leading to a more efficient planning of Australia’s exports. It does not prevent shippers negotiating directly with operators, nor does it prevent independent owners entering the trade or competition on freight rates between operators. The shipping community is an extremely diverse group with radically different shipping requirements. To the extent that they co-operate to find mutually acceptable solutions to these requirements, the better will be the overall result.”*

3.21 As the Australian National Line said in its submission to the panel:

*“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.”*

#### 4. REGULATORY REGIMES FOR INTERNATIONAL LINER SHIPPING AND AUSTRALIA'S MAJOR TRADING PARTNERS

- 4.1 Information on this issue was provided by Shipping Conferences Services Ltd (the predecessor to LSS Ltd) to the 1993 review, and relevant extracts are contained in Attachment G. In addition, it should be noted that the Brazil Committee report set out more detail relating to the New Zealand Shipping Act.<sup>11</sup>
- 4.2 There have been some important developments since 1993, but to-date all the countries specifically reviewed in that attachment apply, to a greater or lesser extent, exemptions for international liner shipping from their anti-trust policies.
- 4.3 Imperative in this debate are the problems that can arise by any country seeking to apply national competition policy to an international industry. There are no Government-to-Government Air Service Agreements to assist in the control of capacity, and if Australia were to abolish Part X then serious international jurisdictional issues would arise, for example Lines could collude legally under US law in the Australia-US trade, but it would be illegal in Australia without authorisation, which as noted previously has serious problems associated with it.
- 4.4 *“Moreover, steamship agreements and conferences are not confined to the lines engaging in the foreign trade of the United States. They are as universally used in the foreign trade of other countries as in our own. The merchants of these countries now enjoy the foregoing advantages of co-operative agreements, and to restore open and cut-throat competition among the lines serving the United States would place American exporters at a disadvantage in many markets as compared with their foreign competitors.”*<sup>12</sup>

#### United States ...

- 4.5 Following three year's of investigation, the Ocean Shipping Reform Act of 1998 will amend 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.
- 4.6 The major modifications involved are:
- 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.

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<sup>11</sup> 1993 Part X Review Panel, pp. 105-106.

<sup>12</sup> 'Regulating Ocean Shipping in the U.S.A.: Historical perspective and Current Trends', by Mr. J.A. Zerby, published in the 'Great Circle', Vol. 6, No.1, April 1984.

- 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 Federal Maritime Commission.
- 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.

### Europe ...

- 4.7 In 1994, the European Commission's Competition Directorate IV investigated Agreements between international liner shipping companies that impact on competition, but decided to retain existing Regulation 4056/86 which included an automatic exemption for Agreements that do include price fixing and has many other features broadly paralleling those of Part X, with the exception that there are no legislative provisions relating to negotiations between ship operators and shippers. It was also decided to introduce, 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.
- 4.8 It has been reported in the media<sup>13</sup> that a series of meetings were convened between a number of major liner shipping companies and DGIV in 1998, and by October they had reached an advanced stage to develop a more conciliatory framework characterised by convergence between all parties and between the legal regimes in the US and Europe. Part of the background to the discussions was the Commission's decision to fine member Lines of the Trans-Atlantic Conference Agreement US\$298 million for, in the Directorate's view, illegally jointly fixing inland rates. This decision is under appeal.
- 4.9 The draft proposals generally comprised:
- No restrictions to be placed on individual Conference members signing service contracts.
  - Inland price fixing by Conferences in Europe to be abolished.
  - Carriers (collectively) to be allowed, on the basis of individual exemptions, to fix port to port tariffs and to enter into port to port service contracts with shippers.
  - Regulation 4056/86 to be preserved.

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<sup>13</sup> December 1998 'Containerisation International', p. 59.

- 4.10 These draft proposals do not affect any of the current legal cases that exist between DGIV and the various Conferences or the forthcoming review of 870/95, which is to determine if that Regulation is to be continued after the year 2000.
- 4.11 The European Shippers' Council has welcomed these developments. It has stated<sup>14</sup> that "The blueprint suggests a new framework based on working in partnership with shipowners to resolve problems and to develop recommended standards and best practices. Central to this plan is the suggested establishment of a best practice forum encompassing all parties in the maritime supply chain."
- 4.12 The Secretary General of the ESC believed the best practice forum should tackle issues such as the structure and organisation of the inland container market, logistics and organisation of container pools, EDI/electronic commerce/documentation, inland hubs and port procedures, identification of best practices and key performance indicators, container sizes/weights and dimensions/pallet sizes.
- 4.13 The institutional structures in the present Conference/Consortia arrangements are best suited to develop with shippers these best practice procedures.

#### **Korea ...**

- 4.14 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 is required under the new legislation.

#### **Japan ...**

- 4.15 Following a review, Japan has decided to amend its marine Transportation Law to improve procedures for the examination of Carrier Agreements and it is likely to be passed into law in May or June 1999. The anti-trust immunity for such Carrier Agreements will be 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 arise;
  - participation in or withdrawal from the Agreement is not unduly restricted, and
  - content of the Agreement is the minimum necessary to achieve its purpose.

There is 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

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<sup>14</sup> February 1999 'Containerisation International', p.33.

need be, to report on details of their business; such as freight rates and transport volumes and on-the-spot inspections will be able to be conducted under the new law.

- 4.16 Importantly, it appears that the new legislation will apply to Japan's outward trades only, but this needs to be confirmed. Many of the proposed amendments are similar to the existing provisions of Part X.

#### **Other countries ...**

- 4.17 Serious concern has been expressed by many nations with China's proposal to amend its mandatory tariff filing proposals which included registration of international sea freight container bills of lading, along with the filing of sea freight rates. The FMC has warned that the US might impose sanctions on Chinese shipping if it proceeded with its current proposals. In addition, Thailand has published a new Trade Competition Bill which covers all industry sectors and has indicated that this could be enacted by the end of April. There is concern that this legislation may not include exemptions for Conferences and urgent discussions are being held with Thai authorities.

#### **OECD ...**

- 4.18 Following on from the OECD's common principles of pricing policy for member countries, adopted in 1987 and outlined in Attachment G, the OECD, through its Maritime Transport Committee (MTC), developed a statement "Conclusions on promotion of compatibility of competition policy applied to international liner shipping and multimodal operations that include a maritime leg." The conclusions have six main themes:

- Under general principles OECD members agreed on the need to promote compatibility of competition policies and, in the interests of international trade, to seek practical solutions to problems which arise.
- Competition rules should be applied effectively to promote efficient and competitive shipping services.
- Key objectives are efficiency, fair competition, maintenance of contestability of market access, transparency, legal certainty, adaptability to changing circumstances and international compatibility.
- Members agreed that commercial parties should resolve differences through commercial negotiations when possible.
- Exemptions from general competition policies that are provided to liner shipping should be regularly evaluated.
- The effects of proposed changes in legislation on liner shipping should be evaluated before being made.

- 4.19 Included amongst the other principles was the statement that members should consider consultations with each other when doing such reviews of laws and regulations, or when evaluating the effects of particular shipowner agreements, with the aim of promoting compatibility and economic efficiency, and eliminating barriers to multimodal transport:



**5. INVESTIGATIONS BY THE ACCC UNDER PART X AND  
THE PRODUCTIVITY COMMISSION ISSUES PAPER, MARCH 1999**

- 5.1 Since Part X was significantly modified in 1989, there have been only three 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 and, thirdly, the legality of collectively setting THCs in the inwards trades in Australia. Concern was expressed in a number of quarters at the levying of THCs in the inwards trades in Australia.
- 5.2 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.
- 5.3 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 transshipment operators.
- 5.4 The issue of Terminal Handling Charges, as mentioned above, has been a controversial one as far as importers in Australia are concerned. In effect, THCs really are a transparency issue, i.e. how does the freight invoice list 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 THCs 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 THCs are shown in a transparent fashion or not.
- 5.5 Whilst THCs have not been introduced in the outwards trade in Australia to-date, they do remain on the agenda of ship operators, but the initial priority was the establishment of inward THCs and filling gaps in Destination THCs prior to again advancing the issue in detail with APSA. APSA has in the past strongly rejected the application of THCs in the outwards trades in Australia and they have not accepted the point that the benefits of waterfront reform, i.e. if they result in lower stevedoring costs, will be more rapidly passed through the system with THCs bearing in mind that approximately 80 percent of stevedoring costs are recovered through the THC mechanism. More detail can be

provided to the Commission in relation to the calculation of THCs if required, but it is noteworthy that the ACCC is presently using that system to assist with their monitoring of the profits, costs and prices of stevedores.

5.6 Understandably, shippers want an all-in rate so that these third party costs are simply absorbed by shipowners. It was the declining freight rates in the mid-1980s which first alerted shipowners to the need to separate out these costs, which had been increasing significantly worldwide. Below is, for example, a chart on the movement of terminal costs compared with average revenue/TEU for the trade from Australia to Europe over the period 1983 to 1992, and it will be seen that stevedoring costs were increasing at a time of declining freight rates.

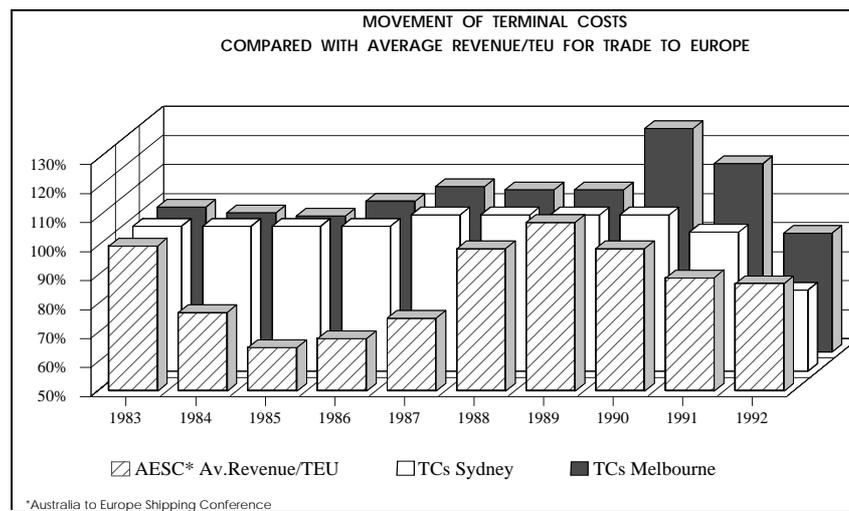


fig. 13

5.7 THCs are prevalent in most of our trading partners 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. The practice in Australia of applying Port Service Charges also increases the transparency aspects on a port by port basis. Both the National Farmers' Federation and the Australian Minerals Council, in the past, have supported the transparency aspects of these types of charges. Efforts were made at the time to meet with importer associations to explain the background and to discuss the issue generally, but such an invitation was not accepted. In terms of the practical examples of the advantages of transparency, Port Service Charges have declined significantly since a greater proportion of shipowner costs incurred in statutory port charges were separated from the freight rate in 1990. The benefits of reduced port charges have been quickly passed back to exporters through the Port Service Charge mechanism. The Part X mechanism provides the machinery for the verification of these charges and, as outlined elsewhere in this submission, Lines would be agreeable to a Peak Designated Group of importers being given similar powers to investigate land-based charges in Australia. The only caution is that APSA presently negotiates THCs at destination for Australian liner exports, and those countries may also establish groups of importers to discuss the impact of such charges if Australia were to seek to regulate, in some fashion, THCs in the inwards trades in Australia.

- 5.8 Other issues raised by the Commission in the Issues Paper for this inquiry, not already covered in this submission, include the following:
- What would happen to the level of services provided to Australian shippers if Conferences were not allowed to operate?
  - What are the implications of intermodalism for liner shipping Conferences?
  - How do Conference freight rates compare with independent shipping operators' rates and do independent operators exercise market power?
  - What factors are taken into account in setting freight rates?
  - How useful to shippers is the information required of shipping Lines under Part X in rate negotiations, and are any dispute settlement procedures adequate?
  - Are there other ways to achieve the objectives of Part X, or what possible modifications could be made to Part X in order to increase its capacity to meet the objectives set?
- 5.9 **What would happen to the level of service provided to Australian shippers if Conferences were not allowed to operate?**
- It is emphasised that Lines are not simply supporting the continuation of the status quo. Amendments to the existing legislation are proposed which, in the view of Conferences and similar Associations, will assist in the facilitation and development of Australia's international trade. It is considered unrealistic simply to apply the current authorisation process in Part VII of the Act; bearing in mind that one modern container vessel (and which could not provide a viable service on its own) costs around A\$125 million. Being unable to determine the operating environment before making an investment decision of such magnitude would inhibit shipping Lines from investing in this trade in the way that they have in the past. Over A\$1.5 billion has been invested in this trade since the last Part X review.
- 5.10 In the absence of the current legislative regime, and without authorisation, there could be a rapid growth in feeder services and eventual costs could exceed the costs of the previous direct services. An important issue is that if Lines could legally collude to rationalise their sailings and provide some stability in the trades, say from Europe and USA to Singapore and they would only be independent in the Singapore-Australia leg, then this would put those Lines providing direct services from Europe and USA to Australia at a distinct disadvantage.
- 5.11 In the past, the Trade Practices Commission has advised that each authorisation under Part VII would have to be looked at on a case-by-case basis, but once a clear precedent was established then subsequent authorisations should flow through more speedily. However, they accepted that if a subsequent authorisation was appealed against, the parties to that Agreement could find themselves having to compete with other Conference Agreements which had been authorised. The TPC has also acknowledged in the past that a greater level of uncertainty than under the current Part X arrangements would apply under Part VII if there were no specific amendments to pick up the efficiencies currently contained in Part X.
- 5.12 If it was no longer possible for Lines to agree common freight rates, then it is likely that the required levels of service, provision of adequate equipment levels and the fixing

of freight rates for extended periods will cease to be possible and will be to the direct detriment of Australia's international liner trading efforts. The ability to work closely with shippers to promote trades would also not be possible, and there is strong evidence of these developments in the past, expressly for refrigerated services and the co-ordination necessary to meet the requirements of the horticultural industry. The development of the chilled beef market to Japan is another prime example.

5.13 It is sometimes not appreciated that Australia is a relatively small international liner shipping trade. 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 the ability to set common freight rates and to collude to rationalise and provide economic services. Both exporters and importers require the high level of frequency and reliability of sailing schedules provided by these types of co-operative arrangements.

5.14 **What are the implications of intermodalism for liner shipping Conferences?**

The shipping Conference structure is well suited to become more involved in intermodalism, and many individual Lines have announced new initiatives to assist shippers with door-to-door movements, and in particular to facilitate electronic commerce. The ability, for example, for some shippers to cut their own Bills of Lading in their offices is offered by a number of member Lines at this point in time. More could be done, and, taking a leaf from the European experience, it could well be worthwhile seeking to hold a best practice forum on a national basis to forge a closer link between carriers and their clients. It is noteworthy that the Director of Global Product Development at GeoLogistics, formerly LEP International, told a liner shipping seminar in London recently that the scope existed for shipping Lines to compete with airfreight operators, but to do that shipping Lines needed to introduce many practices that were already common in the aviation industry in terms of information technology, uniformity and global solutions. In his view, airlines could provide cargo status by EDI in 70 percent of moves, but the corresponding figure for ocean carriers was under 10 percent. There is undoubtedly significant opportunity for individual Lines to offer such services, but the greatest potential will be achieved where they can co-operate in terms of equipment provision, repositioning of containers, documentation, and so on, which are the underlying reasons for the formation of the worldwide shipping Alliances. Spanning, as they do, geographic trade areas, they are also ideally suited to meet the requirements of global shippers. As mentioned further on, any impediments to total logistical services being provided by Conferences imposed by any uncertainty as to the interpretation of Sections 10.14 and 10.22 in Part X should be removed.

5.15 **How do Conference freight rates compare with independent shipping operators' rates and do independent operators exercise market power?**

Unlike the situation in 1993, independent operators and Conference operators providing competitive transshipment services now set rates at times above, at or below the rates set by a Conference in a specific geographic trade area, depending upon their service capability. In other words, an independent shipowner may have a faster service via transshipment or direct to a port in Japan from say Sydney for which he should achieve a premium, but on the other hand there may be a number of cases where he cannot compete with the Conference so readily in terms of service requirements and would therefore need to offer a discount. As explained earlier on in this submission,

existing freight rates are extremely low and for \$25/TEU the loyalty of a shipper can switch from one carrier to another. It is highly probable that there could be 18-20 tonnes of cargo in that twenty foot container.

**5.16 What factors are taken into account in setting freight rates?**

Freight rates were historically set depending upon utilisation factors, the competitive situation, costs involved in positioning empty containers, any additional costs, such as lining the container for wet salted hides, volume, ports, whether the cargo would be rated by weight or volume, and so on. For a number of years now the competitive element in the marketplace has been a greater determinant than any other in terms of setting freight rates because carriers strive for market share irrespective of the cost, at least in the short term. Reference should also be made to the Meyrick submission on the subject of pricing for international liner services.

**5.17 How useful to shippers is the information required of shipping Lines under Part X in rate negotiations, and are dispute settlement procedures adequate?**

Of the Lines represented by LSS, there have been no problems in satisfying the requirements of APSA for information that is reasonably necessary for negotiations held under Part X. If required by the Commission, information can be made available on how this information is compiled in order to support a general rate increase or to determine the basket of currencies used to determine the Currency Adjustment Factor or the Bunker Incidence used to determine the Bunker Adjustment Factor. Whilst CABAFs remain important, their level of application overall has declined, and following successful negotiations with APSA the formulae now relate more to an emergency situation, protecting both the interests of exporters and the Lines, and also meeting that much needed criteria of increased stability. Again, more detail can be made available to the Commission on CABAFs if required.

**5.18 Accords, Discussion Agreements and Service Contracts.**

It is important to differentiate between Accords and Discussion Agreements. Accords were agreed in the early 1980s between Conference Lines and some previous non-Conference operators in the Australia-East Asia trades, and there were compulsory provisions relating to a reduction in the supply of capacity and the range of rates set. This is not the case with Discussion Agreements, which are more pro-competitive and, whilst there have been no Accords registered under Part X since the substantive amendments in 1989, Lines would not be averse to any such Agreements being the subject of special investigation prior to registration. However, this would require a specific definition of Accords in Part X and it would be important in that definition that a non-Conference Line was defined as one that had provided services over a reasonable period of time in the same geographic trade area in competition with the Lines which were party to previous or current Agreements registered under Part X. As discussed elsewhere in this submission, Discussion Agreements are, in the Lines' views, 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 their minimum service levels, Discussion Agreements also provide strong commitments to service exporters' requirements and contribute to trade stability.

**5.19 Lines disagree with the recommendation of the Brazil Committee Report that Discussion Agreements should be subject to specific investigation prior to registration,**

given that they are more competitive than the traditional Conference Constitution type of Agreement. There is adequate mechanism within the Part X regulatory regime to deal with problems of the undue application of any market power that arises from such Agreements. If this is of specific concern to the Commission, member Lines look forward to the opportunity of further debating this issue.

5.20 As mentioned previously, Loyalty Agreements are not used at all if one defines Loyalty Agreement as including a deferred rebate arrangement, as in the 1984 US Shipping Act. The term 'Loyalty Agreement' should be amended to 'Service Contract', and the existing definition in Part X adequately covers the definition of a Service Contract.

5.21 **Are there other ways to achieve the objectives of Part X, or what possible modifications can be made to Part X in order to increase its capacity to meet the objectives set?**

In 1993, Conference Lines argued for the establishment of an industry code on dispute settlement procedures, backed up with financial penalties for specified breaches of the Act, such as the failure to give adequate notice of changes in terms and conditions of service. The Brazil Committee discussed these issues<sup>15</sup> and concluded that the recommended specific industry regulator (which recommendation the Government did not accept) should, if it thought it desirable to do so and with the parties' consent, direct the disputes coming before it under Part X, or any part of them, be referred to a mediator or mediators for mediation before carrying out its investigation and report. member Lines would recommend that such a proposal be considered further along the negotiating chain if it appeared likely that an independent mediator could assist in that process, but Lines agree with the 1993 Part X review panel that it should only be instigated with the consent of both parties involved in the dispute.

### **Possible modifications to Part X ...**

5.22 Member Lines would recommend a number of amendments to the existing Part X:

- (a) That the existing provisions of Part X be examined with a view to determining if there are areas that can be deleted, streamlined and modernised; for example, Service Contracts replacing Loyalty Agreements. There may be other provisions in Part X that have never been used that require investigation to determine whether they could be deleted, which will depend to some extent on likely future developments.
- (b) As proposed in 1993, there should be a clear exemption in Part X for the collective negotiation of stevedoring contracts to encourage the creation of a more efficient Australian waterfront, and this subsequently became a recommendation of the 1993 Part X review panel. Sections 10.14 (outwards) and 10.22 (inwards) regarding limits to the exemption and its extension to terminal-to-terminal or door-to-door rates should be clarified to ensure that the exemptions clearly extend to intermodal rate making by Conferences, on the basis that shippers have the clear choice not to use such services outside of the terminal gate if they so wish. The ACCC has pointed out that it is legally

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<sup>15</sup> Part X Review, 1993, pp. 158-159

unclear what is or what is not covered by these exemptions, and it is the strong view of Lines that they should be allowed to collectively set all charges, at least involved in the terminal gate-to-terminal gate as part of a door-to-door movement, including the collective setting of Port Service Charges and Terminal Handling Charges if there is any doubt as to the necessary exemptions being available. There are definite transparency benefits from the application of these charges and like other 'freight' costs they would need to be, if requested, verified to the satisfaction of APSA under the Part X process. The transparency elements of these types of charges could well be lost if there is an inability to set them collectively, and on a terminal-to-terminal basis this approach would be fully consistent with that taken in Europe and in North America in that the basic exemption at least covers terminal-to-terminal movements.

- (c) To discuss and determine if the existing Agreement registration procedure could be streamlined and modernised. At the very least, a Varying Conference Agreement should be redefined to limit the need for registration when minor amendments are made, or action is actually taken under the registered Agreement and in conformity with its provisions. It should be noted that the existing requirements under Part X to notify any changes to service arrangements would still apply, but the confidentiality provisions that apply to Conference Agreements should equally apply to notifications. The registration process should be accelerated, with a forty-five calendar day period from provisional to final registration if all obligations have been met, unless, in exceptional circumstances, the Minister otherwise directs.
- (d) There should be a mechanism for investigation of complaints regarding inwards shipping, for report to the Government which, in deciding on how to improve the situation, would take into account the interests of those countries for which it is an outward shipping arrangement. Lines would support an exemption for the designation of a Peak Importer Body to collectively consult with Lines on inland transport arrangements and costs in Australia.
- (e) Lines would support the recommendation for the proposed mediation requirements as recommended by the Brazil Committee of review, and also that review's recommendations regarding financial penalties for the breaches of the Act specified by that panel. Essentially, such mediation should be included in an industry code on dispute resolution procedures, which hopefully can be negotiated with APSA.

5.23 The Lines would be happy to discuss with the Productivity Commission the details of these broad recommendations.

## 6. CONCLUSIONS

- 6.1 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 exporters, the general public and efficient resource allocation, as well as the Government's commitment to accelerate and strengthen the micro-economic reform process, including improving the competitiveness of markets.
- 6.2 This submission has clearly outlined that a streamlined Part X will achieve these objectives and, in particular, will be compatible with the regulatory regimes in most of Australia's international trading partners.
- 6.3 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 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 in a climate of economic weakness in our traditional Asian markets.
  - 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 specialised cargo services to the Australian shippers' benefit. Without the conference agreements the supply of such services, e.g. refrigerated 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 non-Conference and transshipment 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 bound Australian cargo are open to scrutiny and within the purview of the Australian marketplace. Other countries have seen fit to maintain similar arrangements, i.e. keep such arrangements outside their respective anti-trust legislation. To do otherwise would be contrary to their perceived national interests and create uncertainty in a market which requires longevity, continuity and stability of service.

- Economies of Scale and Better Utilisation of Resources

Conference shipping arrangements encourage, through slot sharing and pooling 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 divisible 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.

- 6.4 Importantly, vessels and equipment purpose-built for the Australian trade usually contain features that 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.
- 6.5 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 extremely competitive freight rates which must rank amongst the lowest in the world, despite the limited size of the market, high internal costs, e.g. port charges, the distance of Australia from its major trading partners, and the frequency of service which several of its export commodities demand.
- 6.6 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 .....**

- 6.7 It is emphasised that Conferences are simply not supporting the continuation of the status quo, but amendments to the existing legislation have been proposed which, in the view of Conferences, will assist in the facilitation and development of Australia's international liner trade.
- 6.8 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.
- 6.9 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, set common freight rates.

- 6.10 It is the recommendation of LSS 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. It is noted that in the recommendations of the Productivity Commission's Report on International Air Services there was a recommendation that "Australia should invite like-minded countries to discuss the formation of an open club of nations committed to liberalising international aviation through a common plurilateral 'open skies' agreement. In addition, the Australian Government should promote the establishment of a working party of WTO members to determine a process for including all air services in the GATS. The working party should feed into the forthcoming review of the GATS." This clearly acknowledges the importance of developing an appropriate international regime and environment that will facilitate, rather than inhibit, the growth of world trade.
- 6.11 The option of retaining the status quo should not be summarily dismissed, especially if it has the strong support of Australian liner exporters. However, the preference for LSS is a streamlined and more efficient Part X with the adoption of the modifications listed in paragraph 5.26 of this submission, which we believe will significantly contribute to modernising the regime and expanding its contribution to the Government's efforts to accelerate and strengthen the micro-economic reform process.
- 6.12 LSS 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.



## **LINER SHIPPING SERVICES LIMITED**

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### **LIST OF MEMBER SHIPPING LINES OF THE CONFERENCES REPRESENTED BY THE COMPANY**

#### **Australia to Europe Liner Association**

*Area served:*

Ports in 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:*

Associated Container Transportation (Australia) Limited  
Compagnie Generale Maritime  
Compagnie Maritime Marfret  
Consortium Hispania Lines  
Contship Container Lines Ltd  
Hapag-Lloyd Container Line GmbH  
P&O Nedlloyd B.V.  
P&O Nedlloyd Limited  
Shipping Corporation of New Zealand Limited  
Wilhelmsen Lines As

#### **Australia Northbound Shipping Conference**

*Area served:*

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

*Member Lines:*

ANL Container Line Pty Limited  
Bakke Shipping Pty Ltd  
Kawasaki Kisen Kaisha, Ltd  
Mitsui O.S.K. 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)  
Yangming Marine Transport Corporation  
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:*

members as per Australia Northbound Shipping Conference  
*plus*  
Blue Star Line (Asia ) Pty Ltd  
Cho Yang Shipping Co Ltd  
Maersk 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 and Brunei.

*Member Lines:*

ANL Container Line Pty Limited  
APL Lines (Australia)  
Compagnie Generale Maritime  
Evergreen Marine Corporation  
Hanjin Shipping  
Kawasaki Kisen Kaisha, Ltd  
Lloyd Triestino di Navigazione Societa per Azioni  
Maersk Australia Pty Ltd  
Malaysia International Shipping Corporation Berhad  
Mitsui O.S.K. Lines Ltd  
Nippon Yusen Kabushiki Kaisha  
Orient Overseas Container Line Ltd (Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd)  
P&O Nedlloyd B.V.  
P&O Nedlloyd Limited  
Pacific International Lines (Pte) Ltd  
PT Djakarta Lloyd  
RCL (Australia) Pty Ltd  
Zim Israel Navigation Co 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 Sea ports) and ports in West India, Pakistan and Sri Lanka.

*Member Lines:*

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

### **Australia-Canada ContainerLine Association**

*Area served:*

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

*Member Lines:*

P&O Nedlloyd Limited

Columbus Line

Australia-New Zealand Direct Line

### **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

Columbus Line

Australia-New Zealand Direct Line

as at March 1999

## VARIOUS ARRANGEMENTS IN THE INTERNATIONAL LINER TRADES

Arrangement	Essential Characteristics	Comment
<b>1) Conference Agreements</b>	Normally covered by a Conference Constitution which acts as an umbrella for other types of Agreements, such as consortium/rationalisation, pooling, 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.	Please refer to explanatory notes, but purport to restrict rate competition, etc. (albeit generally unsuccessfully in the current market). Only 'Open' Conferences exist in the Australia to US trade.
<b>2) Discussion Agreements</b>	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 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 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. (The Trade Facilitation Agreement in the S-E Asia trade is a good example in that despite failed attempts at common pricing, Lines have persisted in trying to make the Agreement work.)
<b>3) Accords</b>	Usually binding Agreements between Conference Lines and previous independent Lines in the trade regarding agreed capacity to be provided in the trade lane concerned and usually an agreed range of freight rates/minimum rates to be offered. (More background information on the one attempt to introduce Accords in the ANSCON trade can be provided, if required.)	There are no Accords in the Australian outward trades at present (not since the early 1980s). In fact, these Agreements were not successful and collapsed under market pressure.
<b>4) Pooling/ Trade Share Agreements</b>	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. In all cases, they exist under the umbrella of Conference Agreements.	More information on these Agreements will be included in the LSS submission.
<b>5) Consortium Agreements</b>	Operational/technical Agreements covering the rationalisation of sailings, slot swapping or slots purchased on a used or unused basis. Normally they are also under the umbrella of Conference or Discussion Agreements.	Refer explanatory notes.
<b>6) Joint Service Agreements</b>	Similar to Consortium Agreements but only involve two parties.	

**Note:** All the above arrangements involve parties who operate vessels or are capable of operating vessels. They do not include Non-Vessel Operating Common Carriers (NVOCCs) or International Freight Forwarders (refer the 1984 US Shipping Act for useful definitions in this respect.)

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## COMMENTARY

This review covers the trades represented by Liner Shipping Services Ltd, viz. Australia to Europe, South-East Asia, North and East Asia, North America, Middle East Gulf, India, Pakistan and Sri Lanka. The Trans-Tasman trade, for example, has also been subject to significant change over the last few years in terms of declining freight rates and subsequent withdrawal of services. This is not covered in detail here but it should be noted that in 1998 South Pacific Shipping went out of business, in 1998 P&O Nedlloyd acquired Tasman Express Line Ltd and BHP(T) withdrew from providing liner services across the Tasman.

### **Direct Australia to Europe Trade**

1993 member Lines of the Australia to Europe Shipping Conference were:

- ANL Limited\*
- Consortium Hispania Lines
- Hapag-Lloyd Aktiengesellschaft\*
- Lloyd Triestino Di Navigazione Societa Per Azioni\*
- P&O Containers Ltd\*
- Wilhelmsen Lines AS

\* members of the ANZESCS consortium

In 1999, member Lines of the Australia to Europe Liner Association are:

- Compagnie Generale Maritime
- Compagnie Maritime Marfret
- Consortium Hispania Lines
- Contship Container Lines Ltd
- Hapag-Lloyd Container Line GmbH
- P&O Nedlloyd Limited/P&O Nedlloyd B.V.
- Wilhelmsen Lines AS

(Columbus Line resigned from the Association w.e.f. 1/1/99 as did Lloyd Triestino Di Navigazione Societa Per Azioni)

Vessel sizes of both Conference and non-Conference Lines (in terms of direct services) in 1993 and 1998 are set out in the attached worksheets. These are theoretical capacities that don't take account of deadweight limitations Northbound or space requirements to cover other trade areas, such as the New Zealand to Europe trade.

The size of Conference vessels has increased from around 2,300 TEUs to around 2,800 TEUs.

Non-Conference Lines' vessels (primarily MSC) have grown from around 1,000 to 2,000 TEUs. ABC Container Line has gone into liquidation, the Baltic Shipping Coy and Polish Ocean Lines no longer trade to/from Australia. Contship, CGM and Marfret have joined the Conference and ZIM, with only one vessel now (as a member of ANSCON) offers very limited competition. The main competition is MSC, followed by a number of transshipment operators via S-E Asia, such as NOL (now APL), MISC, Hanjin and OOCL. These transshipment operators have grown as competitors over the period under review; especially Southbound.

Major commodities carried Northbound by the Conference include, in percentage terms:

Commodity	% of 1997/98 Carrying	% Volume change from 1993 to 1998
Hard Frozen Meat	6	+131
Cotton	7	+659
Hides	5	+40
Rice	6	+1211
Sheepskins	5	+100
Wine	12	+68
Wool	20	+22

Frequencies and transit times are contained in the attached worksheets. It is important to note that it is not possible to forecast the future of the Australia to Europe trade without assessing the future of the New Zealand to Europe trade. In terms of volume, priorities for the direct liner service are Europe to Australia, New Zealand to Europe and then Australia to Europe.

Over the last five years it is estimated that transshipment to Europe via South East Asia (primarily Singapore) has grown to about 10% of the total trade. However, the growth in transshipment in the Southbound trade to Australia has grown much more rapidly and could account for around 15% of the total trade at the present time.

### **Direct Australia to North and East Asia Trades**

Member Lines of the Australia Northbound Shipping Conference in 1993 were:

ANL Limited  
Australia Japan Container Line/Asia Australia Container Service (AJCL/AACS)  
Cho Yang Shipping Co. Ltd  
Kawasaki Kisen Kaisha Ltd  
Knutsen Line Limited  
Mitsui O.S.K. Lines Ltd  
Nippon Yusen Kabushiki Kaisha  
Orient Overseas Container Line Ltd  
Yangming Marine Transport Corporation

In 1999, member Lines are:

ANL Container Line Pty Limited  
Kawasaki Kisen Kaisha Ltd  
Mitsui O.S.K. Lines Ltd  
Nippon Yusen Kabushiki Kaisha  
Orient Overseas Container Line  
P&O Swire Containers Limited (*previously AJCL/AACS*)  
Yangming Marine Transport Corporation  
Zim Israel Navigation Co Ltd

In 1993 the major competitors were Bridge Line/EAC, Contship, COSCO, FESCO, Hanjin, MISC, Southern Cross Lines, Wilhelmsen Lines and ZIM. ZIM subsequently joined the Conference and

entered into a joint service with OOCL. Maersk Line purchased EAC and CYS left the Conference and entered into a consortium arrangement with Blue Star Line (Asia) (previously Bridge Line) and Maersk Line. In 1998 Evergreen (who have purchased Lloyd Triestino), Hanjin Line and MISC provide competition via transshipment services and the other main competitors are COSCO, FESCO, MSC, Spliethoff and Wilhelmsen Lines. Details of the services provided in the period under review are attached.

It is important to note the distinction in services between East Asia (Hong Kong, Taiwan and the Philippines) and Japan/Korea and how they have changed over the period under review. In 1993, selected vessels of the ANSCON consortium (ANL, NYK, "K" Line, MOL, P&O Swire and YML) served both North and East Asia, but in 1996 the two trades were separated with five vessels dedicated to the East Asia trade and six vessels dedicated to the Japan/Korea trade. It is likely that in 1999 there will be another restructuring of the ANSCON service.

For clarification, ANL, P&O Swire, NYK, "K" Line and MOL are in a consortium together and they have a slot chartering arrangement with YML (which has not operated a vessel in the trade for some years). In turn, the consortium has a slot chartering arrangement with the OOCL/ZIM joint service. Included in this Attachment (page 34) is a copy of the current ANSCON service rotations (which were originally introduced in 1996).

In 1998 P&O Nedlloyd acquired Blue Star Line, including Blue Star Line (Asia) and a Discussion Agreement entitled "The Australia/North and East Asia Trade Facilitation Agreement", which, in addition to the ANSCON member Lines, included Cho Yang Shipping Co Ltd, Blue Star Line (Asia) and Maersk Australia Pty Ltd, was registered under Part X.

There has always been a separate Western Australia service as far as ANSCON is concerned. Up until two years ago there was a dedicated service, but since then, with the exception of "K" Line, there is a transshipment service provided via South East Asian ports. A direct service is still provided by "K" Line.

The major commodities carried from Eastern Australia to North and East Asia are as follows:

Commodity	% of 1997/98 Carryings	% change from 1993 to 1998
<b>Japan</b>		
Aluminium	3.3	+180
Building Supplies	4.5	+55
Cotton/Cotton Seed	14.0	+43
Dairy Products	3.4	+98
Foodstuffs	3.4	+28
General/Reefer NEI	2.8	-61
MV Components	3.4	-29
Pet Food	6.9	-41
Snack Food	7.6	+75
Malt	7.3	+34
Meat – Beef – Chilled	11.6	-42
Meat – Beef – Frozen	8.8	+27
Wool	3.8	-56

<b><u>Korea</u></b>		
Cotton	22.4	+309
Metals & Minerals	12.7	+10
Other – General	25.6	+35
Meat – Hard Frozen	11.1	-33
Wool	5.2	+5
<b><u>Hong Kong</u></b>		
Building Supplies	5.0	+159
Dairy Products	5.6	+77
Foodstuffs	5.3	+100
Metals – Scrap	11.1	+524
Paper	11.9	+550
Rice	11.3	+19
General Cargo NEI	9.4	-42
Fresh Fruit	3.0	+96
Vegetables	3.9	+580
<b><u>Taiwan</u></b>		
Aluminium	9.5	-
Cotton	4.5	+79
Building Supplies	6.4	-299
Paper	5.9	+584
General Cargo NEI	7.7	-200
Meat	6.4	-22
Wool	6.0	-18
Pet Food	3.2	-7

### **Direct Australia to South-East Asia Trade**

The greatest changes that have occurred in the Australian shipping scene over the last five years have occurred in this trade. In 1993, the Australia South-East Asia Outward Shipping Conference Lines comprised:

- ANL Limited
- Australia Straits Container Line Pte Ltd (a P&O subsidiary)
- Kawasaki Kisen Kaisha Ltd
- Malaysian International Shipping Corporation Berhad
- Nedlloyd Lijnen BV
- Neptune Orient Lines Ltd
- PT Djakarta Lloyd
- Mitsui O.S.K. Lines Ltd

ANL, ASCL, NOL and DJL were part of the ANRO consortium. Non-Conference competition was provided by a consortium comprising NYK, Hanjin, Lloyd Triestino and Regional Container Lines, as well as independent operators such as COSCO, CGM, Contship, Wilhelmsen Lines, ZIM and Southern Cross Lines, as well as from Western Australia, EAC Lines and Stateships of W.A.

EAC Lines were purchased by Maersk Line and Southern Cross Lines/Stateships ceased trading. Besides Maersk, a number of new Lines entered the trade, viz. MOL, Evergreen, Pacific

International Lines, OOCL, Bakke Shipping and “K” Line. NOL has also acquired American President Lines and changed its name to APL.

In 1994 the Australia South-East Asia Outward Shipping Conference became the Australia/South East Asia Shipping Forum. There are now three major consortia operating in this trade:

- AAX comprising ANL, APL, DJL, NYK and PONL
- AAA comprising MISC, MOL, OOCL, PIL (plus non-vessel operators ZIM and YML)
- ASA comprising Hanjin, LT, Evergreen and RCL

In 1997 the Australia/South East Asia Shipping Forum ceased to function. Subsequently, a number of Lines agreed to enter into a Talking or Discussion Agreement (a copy can be made available if required), entitled The Australia S-E Asia Trade Facilitation Agreement (TFG) and membership in 1999 comprises:

- ANL Container Line Pty Limited
- APL Lines (Australia)
- Compagnie Generale Maritime
- Evergreen Marine Corporation
- Hanjin Shipping
- Kawasaki Kisen Kaisha Ltd
- Lloyd Triestino Di Navigazione SPA
- Maersk Australia Pty Ltd
- Malaysia International Shipping Corporation Berhad
- Mitsui O.S.K. Lines Ltd
- Nippon Yusen Kabushiki Kaisha
- Orient Overseas Container Line Ltd
- P&O Nedlloyd Limited/P&O Nedlloyd B.V.
- Pacific International Lines (Pte) Ltd
- Pt Djakarta Lloyd
- RCL (Australia) Pty Ltd
- Zim Israel Navigation Co Ltd

As will be seen from the working sheets, both the members and size of vessels have increased dramatically over the last five years.

commodity details are not available but it is known that relatively large volumes of fresh fruit and vegetables (especially ex W.A. and S.A.) move in addition to cotton, rice, dairy and meat.

### **Direct Service from Australia to North America**

Whilst the number of vessels has increased, there has also been a small increase in the size of individual vessels. They now average around 1200 TEUs. The Conference comprises ANZDL, Columbus and Blue Star Line (now P&O Nedlloyd). It should also be noted that C.P. Ships has purchased ANZDL (they also own Contship). There was a recent announcement (March 1999) that Contship and Wilhelmsen Lines will be co-operating closely in this trade in terms of rationalised services.

Discussion Agreements have existed in these trades for a number of years and in addition to the members of the Conferences, comprise Cool Carriers and Seatrade, who operate conventional self-gearred reefer ships.

Besides Contship and FESCO, competition via direct services is provided by Wilhelmsen Lines and BHP/IMTL and there are a considerable number of transshipment operators. Since 1993, ABC Container Line ceased trading and, of course, P&O Containers Ltd merged with Nedlloyd. South Pacific International Line, COSCO and CGM withdrew from the direct trade to North America.

The dominant commodity carried Northbound is hard frozen meat, but other major Northbound commodities include wool, dairy products, beer and wine, etc.

**Direct Service from Australia to the Middle East Gulf and West India, Pakistan and Sri Lanka**

The worksheets set out background details (pp. 49-51) but please note that vessel sizes relate to actual tonnage on the berth for this Northbound trade area and are not total vessel capacities as provided in the other trade areas.

The membership of the Conferences (they were two separate Agreements: one being Middle East Gulf and the other West India, Pakistan and Sri Lanka) was:

- Blue Star Line
- P&O Containers Ltd
- Nippon Yusen Kabushiki Kaisha

The only major change has been the P&O Nedlloyd purchase of Blue Star Line, which has reduced membership to two operators only. There is extensive competition provided by transshipment operators.

The major commodities are:

Commodity	% of 1997/98 Carryings	% change from 1993 to 1998
<b><u>Australia Middle East Gulf</u></b>		
Reefer	25	-13.8
Foodstuffs	30	+3.4
General	45	+7.1
<b><u>West India/Pakistan/Sri Lanka</u></b>		
Reefer	8	+166.7
Beverages and Foodstuffs	31	+675.0
General	42	-40.8
Wool	19	-13.6

### International Liner Shipping Structure - Outward From Australia - 1993

Lines	Conference/ Consortium	Conference/ Non-Consortium	Non-Conference/ Consortium	Non-Conference/ Independent
ANL	EUR, NEA, EA, SEA			
(P&OCL/ACTA/ASCL/ AJCL/AACS Group)	EUR, NEA, EA, SEA, MEG			
HL	EUR			
LT	EUR		SEA	
CHL		EUR		
NLL	EUR, SEA			NA
WL		EUR		SEA, EA, NEA, NA
C/E			EUR, SEA, EA	
ABC				EUR, NA
MSC				EUR
BSC				EUR
CGM				EUR
ZIM				EUR, SEA, EA, NEA, SA(T), NA(T)
CYS	NEA			
KKK	NEA, EA(C/C)	SEA		
KL	NEA, EA			
MOL	NEA, EA(C/C)			MEG(T)
NYK	NEA, EA(C/C), MEG		SEA	NA(T)
YML	NEA, EA			
OOCL		NEA, EA		EUR(T), NA(T)
EAC/B			NEA, EA	
COSCO				NEA, EA, SEA, China(T), NA(T)
FESCO				EA, NEA
MISC				EUR(T), EA(T), NEA(T), NA(T)
HAN			SEA	EUR(T), EA, NEA
SCL				SEA, EA
NOL	SEA			EUR(T), EA(T), NA(T)
RCL			SEA	
SWA				SEA
BSL	MEG, NA		EA, NEA (via EAC/B)	
COL	NA			SA
ANZDL	NA			
CC				NA
SPIL				NA

- Key:** (T) = Transhipment  
 EUR = Europe trade [Australia to Europe Shipping Conference]  
 SEA = South East Asia [Australia South-East Asia Outward Shipping Conference]  
 NEA = North East Asia (Japan/Korea) [Australia Northbound Shipping Conference]  
 EA = East Asia (Hong Kong/Taiwan/Philippines) [Australia Northbound Shipping Conference]  
 MEG = Middle East Gulf/West India/Pakistan/Sri Lanka trade [Australia to Middle East Gulf Conference, and  
 Australia to West India/Pakistan/Sri Lanka Rate Agreement]  
 CC = Car Carriers (part of Southbound Conference from Japan)  
 NA = North America [Australia-United States Container Lines Association]  
 SA = South America

**Note:**

	ANL	Australia National Line ( <i>Australia</i> )
*	(P&OCL/ACTA/ASCL/AJCL/AACS Group)	P&O Containers Ltd/Associated Container Transportation (Australia) Ltd/Australia Straits Container Line/Australia Japan Container Line/Asia Australia Container Service ( <i>British</i> )
*	HL	Hapag Lloyd ( <i>German</i> )
*	LT	Lloyd Triestino ( <i>Italian</i> )
*	CHL	Consortium Hispania Lines ( <i>Spanish</i> )
*	NLL	Nedlloyd ( <i>Dutch</i> )
*	WL	Wilhelmsen Lines ( <i>Norwegian</i> )
*	C/E	Contship/Eagle Container Line ( <i>Italian</i> )
	ABC	ABC Container Line ( <i>Belgium</i> )
*	MSC	Mediterranean Shipping Line ( <i>Italian</i> )
	BSC	Baltic Steamship Coy. ( <i>Russian</i> )
*	CGM	Compagnie Generale Maritime ( <i>French</i> )
*	ZIM	ZIM Line ( <i>Israeli</i> )
*	CYS	Cho Yang Shipping Co. Ltd ( <i>Korean</i> )
*	KKK	Kawasaki Kisen Kaisha ( <i>Japanese</i> )
	KL	Knutsen Line Ltd ( <i>Norwegian</i> )
*	MOL	Mitsui OSK Lines ( <i>Japanese</i> )
*	NYK	Nippon Yusen Kabushiki Kaisha ( <i>Japanese</i> )
#	YML	Yangming Marine Transport Corp ( <i>Taiwanese</i> )
*	OOCL	Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd ( <i>Hong Kong</i> )
*	EAC/B	East Asiatic Shipping Coy. (Maersk)( <i>Danish</i> )/Bridge Line (owned by Blue Star - <i>British</i> )
	COSCO	COSCO Ocean Shipping Coy. ( <i>Chinese</i> )
	FESCO	Far Eastern Shipping Coy. ( <i>Russian</i> )
*	MISC	Malaysian International Shipping Corp. ( <i>Malaysian</i> )
*	HAN	Hanjin ( <i>Korea</i> )
	SCL	Southern Cross Lines
*	NOL	Neptune Orient Lines Ltd ( <i>Singaporean</i> )
	RCL	Regional Container Lines Co Ltd ( <i>Singaporean</i> )
	SWA	Stateships of W.A.
*	BSL	Blue Star Line ( <i>British</i> )
*	COL	Columbus Line - Hamburg Süd ( <i>German</i> )
*	ANZDL	Australia New Zealand Direct Line ( <i>French</i> )
	CC	Cool Carriers
	SPIL	South Pacific International Line

\* belong to conferences/consortia in other parts of the world

# non-conference operator in other parts of the world

**International Liner Shipping Structure - Outward from Australia  
as at January 1999**

Lines	Conference/ Consortium	Conference/ Non-Consortium	Non- Conference/ Consortium	Non-Conference/ Independent
ANL <sup>①②</sup>	EA, NEA, SEA			
ANZDL <sup>③</sup>	NA			
APL <sup>①</sup>	SEA			EA(T), EUR(T), MEG(T), MEG(T)
BSL(A) <sup>②</sup>	EA, NEA			
C&S <sup>③</sup>				NA
CGM <sup>①</sup>	EUR, SEA			MEG(T)
CHL		EUR		
COL <sup>③</sup>	NA			EUR(T), SA
CONT	EUR, SEA		NA	EA(T), NEA(T)
COSCO				CHINA, EA, NA(T), NEA
CYS <sup>②</sup>	EA, NEA			
EVERGREEN <sup>①</sup>	SEA			EA(T), EUR(T), MEG(T), NEA(T)
FESCO			NA	EA, NEA
HAN <sup>①</sup>	SEA			CHINA(T), EA(T), EUR(T), NEA(T)
HL	EUR			SEA
KKK <sup>①②</sup>	EA, NEA	SEA		
LT <sup>①</sup>	EUR, SEA			
MAERSK <sup>①②</sup>	EA, NEA	SEA		EUR(T), MEG(T), NA(T), SA(T)
MAR	EUR			
MISC <sup>①</sup>	SEA			EA(T), EUR(T), NA(T), NEA(T), MEG(T)
MOL <sup>①②</sup>	EA, NEA, SEA			EUR(T), MEG(T), SA
MSC			NA, SAF	EA, EUR, NEA, SEA
NYK <sup>①②</sup>	EA, MEG, NEA, SEA			EUR(T), NA(T)
OOCL <sup>①②</sup>	EA, NEA, SEA			EUR(T), MEG(T), NA(T)
PONL <sup>①③</sup> /POSCL <sup>②</sup>	EA, EUR, MEG, NA, NEA, SEA			
PIL <sup>①</sup>	SEA			EA(T), EUR(T), MEG(T), NEA(T)
PTDL <sup>①</sup>	SEA			
RCL <sup>①</sup>	SEA			EA(T), NEA(T)
WL		EUR		EA, NA, NEA, SEA
YML <sup>②</sup>	EA, NEA		SEA	MEG(T)
ZIM <sup>①②</sup>	EA, NEA	SEA		

**Key:**

- EA = East Asia (Hong Kong/Taiwan/Philippines) [Australia Northbound Shipping Conference]
- EUR = Europe trade [Australia to Europe Liner Association]
- MEG = Middle East Gulf/West India/Pakistan/Sri Lanka trade [Australia Middle East Gulf and West India/Pakistan/Sri Lanka Conference]
- NA = North America [Australia-United States Container Line Association]
- NEA = North East Asia (Japan/Korea) [Australia Northbound Shipping Conference]
- SA = South America
- SAF = South Africa
- SEA = South East Asia [Australia South-East Asia Trade Facilitation Agreement]
- (T) = Transshipment
- ① = Members of the Trade Facilitation Group in the S-E Asian trade
- ② = Members of the Trade Facilitation Agreement plus ANSCON members
- ③ = Members of the Australia-United States Discussion Agreement

**Note:**

ANL	ANL Container Line Limited ( <i>Australia</i> )
ANZDL	Australia New Zealand Direct Line ( <i>French</i> )
APL	American President Lines ( <i>Singaporean</i> )
BSL(A)	Blue Star Line (Asia) ( <i>British</i> )
C&S	Cool Carriers and Seatrade ( <i>Scandinavian</i> )
CGM	Compagnie Generale Maritime ( <i>French</i> )
CHL	Consortium Hispania Lines ( <i>Spanish</i> )
COL	Columbus Line - Hamburg Süd ( <i>German</i> )
CONT	Contship Container Line ( <i>Italian</i> )
COSCO	COSCO Ocean Shipping Coy. ( <i>Chinese</i> )
CYS	Cho Yang Shipping Co. Ltd ( <i>Korean</i> )
EVERGREEN	Evergreen Marine Corporation ( <i>Taiwanese</i> )
FESCO	Far Eastern Shipping Coy. ( <i>Russian</i> )
HAN	Hanjin Shipping ( <i>Korea</i> )
HL	Hapag Lloyd ( <i>German</i> )
HYI	Hyundai ( <i>Korean</i> )
KKK	Kawasaki Kisen Kaisha ( <i>Japanese</i> )
LT	Lloyd Triestino ( <i>Italian</i> )
MAERSK	Maersk ( <i>Danish</i> )
MAR	Compagnie Maritime Marfret ( <i>French</i> )
MISC	Malaysian International Shipping Corp. ( <i>Malaysian</i> )
MOL	Mitsui OSK Lines ( <i>Japanese</i> )
MSC	Mediterranean Shipping Company ( <i>Italian</i> )
NYK	Nippon Yusen Kabushiki Kaisha ( <i>Japanese</i> )
OOCL	Orient Overseas Container Line Ltd/Chinese Maritime Transport Ltd ( <i>Hong Kong</i> )
PIL	Pacific International Line (Pte) Ltd ( <i>Singaporean</i> )
PONL/POSCL	P&O Nedlloyd Limited, P&O Nedlloyd B.V., P&O Swire Containers Ltd ( <i>British/Dutch</i> )
PTDL	PT Djakarta Lloyd ( <i>Indonesian</i> )
RCL	Regional Container Lines Co Ltd ( <i>Singaporean</i> )
WL	Wilhelmsen Lines ( <i>Norwegian</i> )
YML	Yangming Marine Transport Corp ( <i>Taiwanese</i> )
ZIM	ZIM Line ( <i>Israeli</i> )

**EXCHANGES AT MAIN AUSTRALIAN PORTS (excl. Brisbane)**  
**1992/93 COMPARED TO 1997/98**

<b>Trade</b>	<b>No. of Calls</b>	<b>Av. Exchange in</b>
	<b>93/98</b>	<b>TEUs/call</b>
		<b>93/98</b>
<b><u>SYDNEY</u></b>		
North America	78/129	332/484
Europe	81/99	320/630
Japan/Korea	96/93	355/455
East Asia	96/46	318/1357
S-E Asia	78/43	570/882
<b><u>MELBOURNE</u></b>		
North America	79/144	398/411
Europe	95/145	331/408
Japan/Korea	94/54	479/841
East Asia	94/52	404/1212
S-E Asia	76/44	572/911
Middle East Gulf, etc.	28/19	521/561
<b><u>ADELAIDE</u></b>		
Europe	28/32	197/357
Japan/Korea	30/26	382/558
S-E Asia	27/47	535/323
<b><u>FREMANTLE</u></b>		
Europe	76/134	161/212
S-E Asia	103/55	237/435
Middle East Gulf, etc.	28/24	68/121

**AUSTRALIA TO EUROPE TRADE – 1993**

**VESSEL CAPACITIES – CONFERENCE**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<b>AESC</b>					
<i>ANZECS Eastabout</i>	Australian Venture	1,032	1,234	2,266	
	Nuova Lloydiana	746	1,767	2,513	
	Remuera Bay	1,201	858	2,059	
	Berlin Express	694	2,022	2,716	
	New Zealand Pacific	1,273	1,071	2,344	
	Resolution Bay	1,273	1,071	2,344	
	Mairangi Bay	1,273	1,071	2,344	
	Palliser Bay	1,033	1,234	2,267	
<i>Sub Total Eastabout</i>		8,525	10,328	18,853	3
<i>ANZECS Westabout</i>	Nedlloyd Tasman	374	1,246	1,620	
	Moreton Bay	454	960	1,414	
	Discovery Bay	454	960	1,414	
	Encounter Bay	374	1,246	1,620	
	Flinders Bay	344	1,276	1,620	
<i>Sub Total Westabout</i>		2,000	5,688	7,688	4
<i>WILHELMSSEN</i>	Taiko		2,455	2,455	
	Tourcoing		1,865	1,865	
	Tapiola		1,865	1,865	
	Tampa		2,426	2,426	
	Talabot		1,946	1,946	
	Tampere		1,946	1,946	
	Texas		2,455	2,455	
	Toba		1,946	1,946	
	Torrens		1,400	1,400	
<i>Sub Total Wilhelmsen</i>			18,304	18,304	2
<b>CONFERENCE TOTAL</b>		<b>10,525</b>	<b>34,320</b>	<b>44,845</b>	

**AUSTRALIA TO EUROPE TRADE – 1993**

**VESSEL CAPACITIES – NON-CONFERENCE**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<i>ABC CONTAINER LINE</i>	Antwerpen	150	1,354	1,504	
	Martha II	422	1,500	1,922	
	Ellen Hudig	610	1,100	1,710	
	Brussel	150	1,334	1,484	
	Cornelis Verolme	610	1,190	1,800	
		1,942	6,478	8,420	
<i>BALTIC SHIPPING CO</i>	Magnitorgorsk			1,346	
	Georgiy Pyasetskiy	80	454	534	
	Smolensk	100	1,399	1,499	
	Akademik Gorbunov	80	670	750	
	Anatoliy Vasiljev	100	1,399	1,499	
	Skulptor Zalkalns	80	664	744	
	Pyotr Masherov	80	634	714	
	Skulptor Konenkov	80	554	634	
	600	5,774	7,720	2	
<i>CGM</i>	CGM Racine	100	1,446	1,546	
	CGM Renoir	100	1,446	1,546	
	CGM Rimbaud	100	1,446	1,546	
	CGM Ronsard	150	1,306	1,456	
	CGM Rabelais			1,768	
	450	5,644	7,862	1	
<i>CONTSHIP EAGLE CONTAINER LINE</i>	CS Holland	50	972	1,022	
	CS Ipswich	50	1,450	1,500	
	CS La Spezia	70	1,530	1,600	
	CS Australia	70	1,430	1,500	
	CS Brave	50	972	1,022	
	CS America	50	752	802	
	CS Barcelona	70	1,529	1,599	
	CS Europe	50	752	802	
	CS Germany				
	Koala Success				
	CS Jork	70	1,430	1,500	
	CS England	50	752	802	
	580	11,569	12,149	4	
<i>MEDITERRANEAN SHIPPING COMPANY</i>	MSC Alexandra			744	
	MSC Mirella				
	MSC Chiara			813	
	Stefania		1,010	1,010	
	MSC Daniella				
	Gina				
		1,010	2,567	2	
<i>POLISH OCEAN LINES</i>	NB POL advertise Eagle Line vessels, which shown above				
<i>ZIM LINE</i>	Zim Melbourne	45	1,155	1,200	
	Zim Kaoshiung	50	954	1,004	
	Zim Piraeus	50	727	777	
	Zim Sydney				
	Zim Genova		1,426	1,426	
	Zim Yokohama	80	856	936	
	Zim Barcelona				
	Zim Osaka			856	
	225	5,118	6,199	2	

**SHIP CAPACITIES – AUSTRALIA TO EUROPE TRADE – 1993**

**CONFERENCE & NON-CONFERENCE LINES**

Line	Total Capacity TEUs		Number of Ships	Monthly Frequency (approx)	Av. Space Avail. per Month TEUs	
	Reefer	Dry			Reefer	Dry
<b>ABC CONTAINER LINE</b>	1,942	6,478	5	1	388	1,296
<b>BALTIC SHIPPING CO</b>	600	5,774	8	2	150	1,444
<b>CGM</b>	450	5,644	5	1	90	1,129
<b>CONTSHIP</b>	580	11,569	10	4	232	4,628
<b>MSC</b>	0	1,010	6	2	0	337
<b>ZIM LINE</b>	225	5,118	6	2	75	1,706
<b>TOTAL - NON-CONF</b>	3,797	35,593	40	12	Av. 999	10,678
<b>AESC</b>						
<b>ANZECS Eastabout</b>	8,525	10,328	8	3	3,197	3,873
<b>ANZECS Westabout</b>	2,000	5,688	5	4	1,600	4,550
<b>WILHELMSSEN</b>	0	18,304	9	2	0	4,068
<b>TOTAL CONF</b>	10,525	34,320	22	9	Av. 5,667	14,040
<b>TRADE TOTAL</b>	14,322	69,913	62	21	Av. 4,774	23,680

**NB**

*Capacities of Conference ships are total capacities. As NZ space requirements fluctuate from ship to ship, it is not possible to show reefer and dry capacity that has been reserved for Australian cargo only.*

*As some vessel data is yet to be obtained, total capacities should be used as a guide only.*

**AUSTRALIA TO EUROPE TRADE – 1993**

**TRANSIT TIMES TO MEDITERRANEAN**

AVERAGE BASED ON SAILINGS MAY 1992 TO APRIL 1993

LINE	Piraeus	Venice	Koper	Tripoli	Naples	Leghorn	La Spezia	Genoa	Barcelona	Valencia	Fos-sur-Mer	Marseilles
AESC	18				21		22		26		25	
ABC						56						
BALTIC								21				
CGM								30				31
CONTSHIP							42					
MSC						33			33	31		34
ZIM	58	61	64	60	60			57	54		55	

*N.B. Basis last Australian loading port to discharge port*

**TRANSIT TIMES TO U.K./NORTH CONTINENT**

AVERAGE BASED ON SAILINGS MAY 1992 TO APRIL 1993

LINE	Lisbon	Le Havre	Dunkirk	Flushing	Antwerp	Zeebrugge	Rotterdam	Hamburg	Bremerhaven	Gothenburg	St. Petersburg	Tilbury	Felixstowe
AESC	33					35	30	34		35		E36 W29	
ABC						45		48					47
BALTIC				28				28			33		27
CGM		45	43		38			40					
CONTSHIP		44					45	50					45
MSC		43			33		34	38	38				35

*N.B. Basis last Australian loading port to discharge port*

**AUSTRALIA TO EUROPE TRADE – 1993**

**MONTHLY SAILINGS TO MEDITERRANEAN**

LINE	May 92	June	July	Aug	Sept	Oct	Nov	Dec	Jan 93	Feb	Mar	Apr	Total
AESC	2	3	3	2	4	2	2	2	3	3	4	4	34
ABC	1	1	1	1	1	1	1	0	0	0	0	0	7
BALTIC	1	2	1	1	1	2	2	1	1	2	2	2	18
CGM	1	1	1	1	1	1	2	2	1	2	2	1	16
CONTSHIP	1	1	2	2	3	3	2	2	3	4	3	4	30
JSP	1	0	0	1	0	1	0	0	0	0	0	0	3
MSC	1	1	1	1	2	1	1	2	2	3	2	3	20
ZIM	1	2	2	1	2	2	2	1	1	2	2	1	19

**MONTHLY SAILINGS TO UK/ NORTH CONTINENT**

LINE	May 92	June	July	Aug	Sept	Oct	Nov	Dec	Jan 93	Feb	Mar	Apr	Total
AESC	3	5	5	4	6	5	3	4	5	6	6	7	59
ABC	1	1	1	1	1	1	1	0	1	2	1	2	13
BALTIC	1	2	1	1	1	2	2	1	1	2	2	2	18
CGM	1	2	1	1	1	1	2	2	1	2	2	1	17
CONTSHIP	2	1	4	2	3	3	2	1	3	4	3	4	32
MSC	1	1	2	1	2	1	1	2	2	3	2	3	21

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**AUSTRALIA TO EUROPE TRADE - 1998**  
**VESSEL CAPACITIES - AELA**

<u>Line (Consortium)</u>	<u>Ship</u>	<u>Capacities</u>			<u>Monthly Frequency (Approx.)</u>
		<u>Dry</u>	<u>Reefer</u>	<u>Total</u>	
Contship - Eagle	Contship Romance	2458	300	2758	
	Contship Ambition	2390	500	2890	
	Contship Vision	2458	300	2758	
	Contship Action	2390	500	2890	
	Contship Nobility	2458	300	2758	
	Contship Optimism	2458	300	2758	
			<b>14,612</b>	<b>2200</b>	<b>16,812</b>
Wilhelmsen	Tampa	2251	200	2451	
	Talabot	1686	120	1806	
	Tampere	1694	120	1814	
	Texas	2251	200	2451	
	Taiko	2251	200	2451	
	Tourcoing	1747	120	1867	
	Tapiola	1747	120	1867	
	Toba	1686	120	1806	
	Taronga	2700	200	2900	
			<b>18,013</b>	<b>1400</b>	<b>19,413</b>
P&O Nedlloyd - Mediterranean	P&O Nedlloyd Jakarta	1656	350	2006	
	P&O Nedlloyd Auckland	1656	350	2006	
	P&O Nedlloyd Genoa	1656	350	2006	
	P&O Nedlloyd Sydney	1656	350	2006	
	P&O Nedlloyd Marseilles	1656	350	2006	
		<b>8280</b>	<b>1750</b>	<b>10,030</b>	<b>2</b>
OSCL/CGM/Marfret	Contship London	1900	300	2200	
	Contship Washington	1900	300	2200	
	Contship Rome	1900	300	2200	
	Contship Auckland	1900	300	2200	
	Marfret Provence	1900	300	2200	
	CGM Cezanne	1900	300	2200	
	CGM Renoir	1900	300	2200	
	CGM Gauging	1900	300	2200	
			<b>15,200</b>	<b>2400</b>	<b>17,600</b>
P&O Nedlloyd Eastabouts	Berlin Express	2022	694	2716	
	Mairangi Bay	1071	1273	2344	
	New Zealand Express	1071	1273	2344	
	Palliser Bay	1234	1033	2267	
	Resolution Bay	1071	1273	2344	
	Pegasus Bay	902	886	1788	
		<b>7371</b>	<b>6432</b>	<b>13,803</b>	<b>2</b>
<b>AELA TOTAL</b>		<b>63,476</b>	<b>14,182</b>	<b>77,658</b>	

Please note that all the above vessels serve New Zealand as well as Australia. Some of these services also serve other Trade areas as well as Europe. Therefore not all the above space is dedicated to the Australia/Europe Trade.

**AUSTRALIA TO EUROPE TRADE - 1998**  
**VESSEL CAPACITIES - NON-AELA**

<u>Line (Consortium)</u>	<u>Ship</u>	<u>Capacities</u>			<u>Monthly Frequency (Approx)</u>
		<u>Dry</u>	<u>Reefer</u>	<u>Total</u>	
Mediterranean Shipping Co	MSC Antwerp	1700	300	2000(?)	
	MSC Sonia	1700	300	2000(?)	
	MSC Rita	1700	300	2000(?)	
	MSC Pamela	1700	300	2000(?)	
	MSC Edna	1700	300	2000(?)	
	MSC Corrina	1700	300	2000(?)	
	MSC Don Giovanni	1700	300	2000(?)	
	MSC Samia	1700	300	2000(?)	
	MSC Insa	1700	300	2000(?)	
	MSC Nuria	1700	300	2000(?)	
	MSC Claudia	1700	300	2000(?)	
	MSC Alice	1700	300	2000(?)	
		<b>20,400</b>	<b>3600</b>	<b>24,000(?)</b>	<b>4</b>
ASA		<b>6639</b>	<b>1376</b>	<b>8015</b>	<b>8</b>
AAA		<b>7160</b>	<b>1720</b>	<b>8880</b>	<b>8</b>
AAX		<b>8244</b>	<b>1200</b>	<b>9444</b>	<b>4</b>
Maersk (W A service)		<b>300</b>	<b>300</b>	<b>600</b>	<b>4</b>
Maersk (East Coast	Maersk Hakata	1000	300	1300	
	Maersk Hong Kong	1000	300	1300	
	Maersk Oceania	1000	300	1300	
	Maersk Sydney	1000	300	1300	
	Brigit Maersk	1000	300	1300	
		<b>5000</b>	<b>1500</b>	<b>6500</b>	<b>4</b>
K Line		<b>5308</b>	<b>500</b>	<b>5808</b>	<b>4</b>
PIL/MISC		<b>3186</b>	<b>700</b>	<b>3886</b>	<b>2</b>
<b>Total Non-AELA</b>		<b>56,237</b>	<b>10,896</b>	<b>67,133</b>	

All the above services accept cargo for other Trade areas as well as Europe.

**AUSTRALIA TO EUROPE - 1998**

**AELA & non-AELA SHIPS' CAPACITIES**

	<u>Dry</u>	<u>Reefer</u>	<u>No. Ships</u>	<u>Mthly Freq (approx)</u>	<u>Dry</u>	<u>Reefer</u>
<b>1. AELA</b>						
Contship - Eagle	14,612	2200	6	2	4870	730
Wilhelmsen	18,013	1400	9	2	4000	310
P&O Nedlloyd - Med.	8280	1750	5	2	3310	700
OSCL/CGM/Marfret	15,200	2400	8	3	5700	900
P&O Nedlloyd - Eastabout	7371	6432	6	2	2457	2144
<b>Total AELA</b>	<b>63,476</b>	<b>14,182</b>	<b>34</b>	<b>11</b>	<b>20,540</b>	<b>4590</b>
<b>2. Non-AELA</b>						
MSC	20,400	3600	12	4	6800	1200
ASA	6639	1376	8	8	6639	1376
AAA	7160	1720	8	8	7160	1720
AAX	8244	1200	5	4	6595	960
Maersk (WA service)	300	300	2	4	600	600
Maersk (East Coast)	5000	1500	5	4	4000	1200
K Line (WA service)	5308	500	5	4	4246	400
PIL/MISC	3186	700	4	2	1590	350
<b>Total non-AELA</b>	<b>56,237</b>	<b>10,896</b>	<b>49</b>	<b>38</b>	<b>43,610</b>	<b>8450</b>
<b>TOTAL TRADE</b>	<b>119,713</b>	<b>25,078</b>	<b>83</b>	<b>49</b>	<b>70,675</b>	<b>14,800</b>

DIRECT LOAD/DISCHARGE CONFIGURATIONS

AELA TRANSIT TIMES - 1999/2000 SEASON

	Brisbane		Sydney		Melbourne		Adelaide		Fremantle	
	WL	C/C/M	WL	P&ONL/CS	C/C/M	days	P&ONL/CS	days	WL	P&ONL/CS
Port Said	days		days		days		days		days	
Piraeus	-	31	-	J33-E33	28	-	J21-E23	E38	-	J17-E18
Salerno	-	-	-	J36-E36	-	-	J24-E26	E41	-	J20-E21
La Spezia	-	-	-	J 38	-	-	J26	-	-	J 22
Marseilles/Fos-sur-mer	-	33	-	J38-E39	30	-	J26-E29	E44	-	J22-E24
Barcelona	-	34M	-	J 41	31M	-	J29	-	-	J 25
Lisbon	-	-	-	J 42	-	-	J 30	-	-	J26
Bilbao	-	-	-	J 39	-	-	J 42	J42	-	J 47
Zeebrugge	-	-	-	-	-	-	-	-	-	-
Tilbury/Soton/Fstowe	32	40	29	J42-E45	37	-	J45-E35	J45	-	E 30
Hamburg	33	-	30	J43-E46	-	33	J46-E36	J46	22	E 31
Bremerhaven	40	-	37	J47-E48	-	37	J50-E38	J50	30	E 33
Gothenburg	42	-	39	-	-	37	-	-	30	-
Rotterdam	39	41	36	-	38	39	-	-	31	-
Dunkirk	-	42	-	-	39	-	-	-	29	-
Antwerp	39	-	36	-	-	33	-	-	-	-
Le Havre	40	43	37	-	40	34	-	-	30	-

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Key :  
 WL = Wilhelmsen Lines  
 J = Eastabout Service/Mediterranean Service  
 E = Eagle Line  
 C/C/M = Contship/CGM/Marftet

**AUSTRALIA TO NORTH EAST ASIA TRADE – 1993**

**VESSEL CAPACITIES – CONFERENCE**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<b>CONSORTIUM</b>	Arafura	720	1,712	2,432	
	Ariake	628	1,172	1,800	
	Australian Advance	438	1,662	2,100	
	Australian Endeavour	638	1,762	2,400	
	Australian Endurance	638	1,762	2,400	
	Hakuba Maru	586	1,214	1,800	
	Nichigoh Maru	584	1,216	1,800	
	Southern Cross Maru	602	1,540	2,142	
		4,834	12,040	16,874	5.5
<b>OOCL</b>	Merkur Bay	45	905	950	
	OOCL Alliance	80	861	941	
	OOCL Applause	80	861	941	
		205	2,627	2,832	2.2
<b>WA SERVICE</b>	Windward	100	825	925	
	Hanne Bakke	120	644	764	
	Fremantle Star	115	680	795	
		335	2,149	2,484	2.5
<b>CONFERENCE TOTAL</b>		<b>5,374</b>	<b>16,816</b>	<b>22,190</b>	

**AUSTRALIA TO JAPAN/KOREA TRADE – 1993**

**VESSEL CAPACITIES – NON-CONFERENCE**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<b>BRIDGE LINE/EAC</b> (East Coast)	Falstria	300	550	850	
	Meonia	300	550	850	
	Pyrmont Bridge	300	800	1,100	
		900	1,900	2,800	2
<b>EAC</b> (West Coast)	Klang Reefer	258	70	328	
	Swan Reefer	258	70	328	
		516	140	656	2
<b>CONTSHIP</b> (see Europe Non-Conference Lines details)					
<b>COSCO</b> (China Ocean Shipping Conference)  <b>TO EAST ASIA</b>	Hui He	60	1,158	1,218	
	Shun He	60	1,158	1,218	
	Xing Hai He	21	715	736	
	Ye He	-	-	-	
		141	3,031	3,172	3.5
<b>COSCO</b> (China Ocean Shipping Conference)  <b>TO JAPAN</b>	Bai He Kou	100	335	435	
	E Cheng	-	-	-	
	Gu Bei Kou	100	653	753	
	Xi Feng Kou	150	579	729	
	Zhang Jia Kou	-	-	729	
		350	1,567	2,646	3.5
<b>FESCO</b>	Gamzat Tsadasa	80	624	704	
	Khudozhnik Ioganson	40	672	712	
	Khudozhnik Zhukov	40	672	712	
	Konstantin Paustovskiy	80	624	704	
	Maksim Mikhaylov	40	672	712	
	Novikov Priboy	80	624	704	
		360	3,888	4,248	3
<b>HANJIN</b>	Hanjin Cheju	-	-	1,048	
	Planeta	120	530	650	
	Olandia	50	610	660	
		170	1,140	2,358	2
<b>MISC</b> (see S.E. Asian Conference Lines details)					
<b>SOUTHERN CROSS LINE</b>	Acrux	-	-	550	
	Alam Teladan	-	-	550	
	Gacrus	-	-	550	
	Manthos	-	-	550	
				2,200	1.5
<b>WILHELMSSEN LINES</b> (see Europe Conference Lines details)					
<b>ZIM</b> (see Europe Non-Conference Lines details)					

SHIP CAPACITIES – AUSTRALIA TO JAPAN/KOREA TRADE – 1993

CONFERENCE & NON-CONFERENCE LINES

Line	Total Capacity TEUs		Number of Ships	Monthly Frequency (approx)	Av. Space Avail. per Month TEUs	
	Reefer	Dry			Reefer	Dry
BRIDGE LINE/EAC (E.Coast)	900	1,900	3	2	600	1,267
EAC (W.Coast)	516	140	2	2	516	140
CONTSHIP	580	11,569	10	4	232	4,628
COSCO (to East Asia)	141	3,031	3	3.5	165	3,536
COSCO (to Japan)	350	1,567	4	3.5	408	1,371
FESCO	360	3,888	6	3	180	1,944
HANJIN	170	1,140	3	2	170	760
MISC	800	6,256	3	3	800	6,256
SOUTHERN CROSS LINE		2,200*	4	1.5		825
WILHELMSSEN LINES		18,304*	9	2		4,068
ZIM LINE	225	5,118	6	2	75	1,706
<b>TOTAL - NON-CONF</b>	<b>4,042</b>	<b>34,609</b>	<b>53</b>	<b>28.5</b>	<b>Av. 2,259</b>	<b>18,611</b>
ANSCON						
Consortium	4,834	12,040	8	5.5	3,323	8,278
OOCL	205	2,627	3	2.2	150	1,926
W.A. Service	335	2,149	3	2.5	279	1,791
<b>TOTAL CONF</b>	<b>5,374</b>	<b>16,816</b>	<b>14</b>	<b>10.2</b>	<b>Av. 3,915</b>	<b>12,252</b>
<b>TRADE TOTAL</b>	<b>9,416</b>	<b>51,425</b>	<b>67</b>	<b>38.7</b>	<b>Av. 5,606</b>	<b>29,704</b>

\* This figure represents total for both dry and reefer as split not known

**TRANSIT TIMES - 1993**

*BASED ON SAILINGS ADVERTISED FOR MAY/JUNE 1993 EX MELBOURNE*

LINE	Yokohama	Yokkaichi	Nagoya	Osaka/Kobe	Busan
ANSCON	14	16	16	18	21
BRIDGE/EAC	13			14	16
COSCO	17			19	
FESCO	26		25	24	
WILHELMSSEN	39			36	34
ZIM	16			18	20

**TRANSIT TIME TO JAPAN / KOREA**

*BASED ON SAILINGS ADVERTISED FOR MAY/JUNE 1993 EX FREMANTLE*

LINE	Yokohama	Yokkaichi	Nagoya	Osaka/Kobe	Busan
ANSCON	18	17	17	20	14
EAC			15	14	18
WILHELMSSEN	23			20	19

**TRANSIT TIME TO EAST ASIA**

*BASED ON SAILINGS ADVERTISED FOR MAY/JUNE 1993 EX MELBOURNE*

LINE	Manila	Keelung	Kaohsung	Hong Kong
ANSCON (CONS)	32	23	26	26
ANSCON (OOCL)	22	18	16	20
CONTSHIP		17		19
COSCO	14			17
FESCO	17			20
MISC	24	25	24	22
SOUTHERN CROSS LINE			23	22
WILHELMSSEN		32		30
ZIM		23		26

**TRANSIT TIME TO EAST ASIA**

*BASED ON SAILINGS ADVERTISED FOR MAY/JUNE 1993 EX FREMANTLE*

LINE	Manila	Keelung	Kaohsung	Hong Kong
ANSCON		12	16	10
EAC	14	16	14	12
MISC		17	16	14
WILHELMSSEN		16		14

**AUSTRALIA TO NORTH EAST ASIA TRADE - 1998**

**VESSEL CAPACITIES – CONFERENCE (ANSCON)**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<b>JAPAN/KOREA</b>	Arafura	720	1,712	2,432	
	Australian Endeavour	638	1,762	2,400	
	Australian Bridge	638	1,762	2,400	
	Hakuba Maru	586	1,214	1,800	
	Nichigoh Maru	584	1,216	1,800	
	Southern Cross Maru	602	1,540	2,142	
			3,768	9,206	
<b>EAST ASIA</b>	Aramac	110	2,190	2,300	
	Australian Advance	438	1,662	2,100	
	OOCL Exporter	150	2,150	2,300	
	OOCL Envoy	150	2,150	2,300	
	ZIM Sydney	215	1,585	1,800	
			1,063	9,737	
<b>WA SERVICE</b> <i>K Line -</i>	Orchid Bridge	192	1,116	1,308	
	Malaysia Bridge	192	1,116	1,308	
	Singapore Bridge	150	914	1,064	
	Java Bridge	150	914	1,064	
	Fremantle Bridge	150	914	1,064	
	<i>Others -</i>	<i>See South East Asia</i>			
		834	4,974	5,808	4.3
<b>CONFERENCE TOTAL</b>		<b>4,602</b>	<b>14,180</b>	<b>18,782</b>	

**AUSTRALIA TO NORTH EAST ASIA TRADE - March 1999**

**VESSEL CAPACITIES – NON-CONFERENCE LINES**

Line	Vessel	TEU Capacities			DWT
		Dry	Reefer	Total	
<b>Cape Line</b>	Grafton	-	-	1,000	-
	Byron	-	-	1,000	-
	Otway	-	-	1,000	-
<b>China Shipping Container Line</b>	Xiang Jin	-	-	1,000	-
	Xiang Ning	-	-	1,000	-
	Kimanis	-	-	1,000	-
	Xiang Cang	-	-	1,000	-
	Xiang Bin	-	-	1,000	-
	Xiang Hao	-	-	1,000	-
	Xiang Ji	-	-	1,000	-
<b>Contship</b>	Contship London	-	-	2,200	-
	Contship Rome	-	-	2,200	-
	Contship Canberra	-	-	2,200	-
	Contship Romance	-	-	2,758	-
	Contship Washington	-	-	2,200	-
	Contship Ambition	-	-	2,890	-
	Contship Vision	-	-	2,758	-
	Contship Action	-	-	2,890	-
	Contship Nobility	-	-	2,758	-
	Contship Optimism	-	-	2,758	-
<b>COSCO (China Ocean Shipping Company) To East Asia</b>	Chao He	1,266	54	1,320	25,955
	Chun He	1,266	54	1,320	25,955
	Qiu He	1,266	54	1,320	25,808
	Hua Tai He	-	-	-	-
	Feng Yun He	-	-	-	-
	Song Yun He	-	-	-	-
<b>COSCO (China Ocean Shipping Company) To Japan/Korea</b>	Yang Jiang He	736	100	836	15,920
	Chao Shan He	736	100	836	15,920
	Xin Hui He	736	100	836	15,920
	Zhao Qing He	736	100	836	15,920
	Liao He	1,174	60	1,234	26,025
	Long He	-	-	-	-
<b>Evergreen Marine Corporation</b>	Hanjin Cheju	906	75	981	14,400
	Kama Bhum	610	190	800	-
	Itha Bhum	610	190	800	-
	Nuova Mediterranean	-	-	1,823	-
	Ganta Bhum	-	-	-	-
	Jitra Bhum	610	190	800	-
	Nuova Nipponica	-	-	1,823	-
	Ever Ally	964	200	1,164	-
<b>FESCO</b>	Kapitan Kurov	1,224	80	1,304	19,470
	Khudozhnik Ioganson	1,174	80	1,254	23,231
	Khudozhnik Zhukov	1,174	80	1,254	22,968
	Maksim Mikhaylov	1,174	80	1,254	23,216
	Kapitan Serykh	-	-	-	-

**AUSTRALIA TO NORTH EAST ASIA TRADE - March 1999**

**VESSEL CAPACITIES – NON-CONFERENCE LINES**  
(.....continued)

Line	Vessel	TEU Capacities			DWT
		Dry	Reefer	Total	
<b>Hanjin Line</b>	Hanjin Cheju	906	75	981	14,400
	Kama Bhum	610	190	800	-
	Itha Bhum	610	190	800	-
	Nuova Mediterranean	-	-	1,823	-
	Ganta Bhum	-	-	-	-
	Jitra Bhum	610	190	800	-
	Nuova Nipponica	-	-	1,823	-
	Ever Ally	964	200	1,164	-
<b>Maersk/Cho Yang Line/Sealand (East Coast)</b>	Brigit Maersk	1,000	300	1,300	30,282
	Maersk Oceania	1,000	300	1,300	30,743
	Maersk Sydney	1,700	300	2,000	30,743
	Maersk Hakata	1,000	300	1,300	30,250
	Maersk Algerciras	-	-	-	-
<b>Maersk (West Coast)</b>	Maersk Singapore	650	100	750	-
	Klang Reefer	150	150	300	-
	Maersk Melbourne	650	100	750	-
<b>MSC (Mediterranean Shipping Company)</b>	MSC Fremantle	-	-	-	-
	MSC Melbourne	-	-	1,254	21,586
	MSC China	1,041	140	1,181	20,676
	MSC Yokohama	1,495	130	1,625	27,738
	MSC Singapore	1,468	140	1,608	20,676
	MSC Indonesia	-	-	-	-
<b>MISC</b>	Bunga Bidara	1,021	180	1,201	20,000
	Bunga Delima	1,021	180	1,201	20,000
	Bunga Kenari	1,021	180	1,201	20,000
	Bunga Terasek	1,050	150	1,200	20,000
	Libra Australia	1,190	200	1,390	20,000
	Kota Pertama	855	200	1,055	-
	Bunga Teratai Satu	1,160	240	1,400	-
	OOCL Acclaim	800	200	1,000	-
	Bunga Teratai Dua	1,160	240	1,400	-
	Kota Perwira	855	200	1,055	-
	Bunga Teratai Tiga	1,160	240	1,400	-
	OOCL Ability	800	200	1,000	-
	Nordwelle	740	150	890	-
	Kota Harta	633	200	833	-
	Kota Hasil	633	200	833	-
<b>Splithoff</b>	Archangelgracht	-	-	678	12,200
	Pijlgracht	-	-	474	9,500
	Emmagracht	-	-	730	12,700
	Parkgracht	-	-	487	9,653
	Ankergracht	-	-	678	12,200
	Lindengracht	-	-	564	9,653
	Lijnbaansgracht	-	-	564	9,653
<b>Wilhelmsen Lines</b>	Taiko	2,251	200	2,451	43,986
	Tourcoing	1,747	120	1,867	31,460
	Tapiola	1,747	120	1,867	31,456
	Tampa	2,251	200	2,451	44,013
	Talabot	1,686	120	1,806	32,434
	Tampere	1,694	120	1,814	33,300
	Texas	2,251	200	2,451	44,080
	Toba	1,686	120	1,806	32,015
	Taronga	-	-	2,900	-

**Non-Conference Lines Currently Operating in the ANSCON Trade  
March 1999**

Non-Conference Line	Eastern Australia to:			Western Australia to:		
	East Asia	Japan	Korea	East Asia	Japan	Korea
Cape Line	Yes*	Yes	Yes	No	No	No
China Shipping Container Line	Yes	Yes	Yes*	No	No	No
Cho Yang Line	Yes	Yes	Yes	No	No	No
COSCO	Yes	Yes	Yes	No	No	No
Evergreen	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*
FESCO	Yes	No	No	No	No	No
Hanjin Line	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*
Maersk	Yes	Yes	Yes	Yes*	Yes*	Yes*
MSC	Yes	Yes	Yes	Yes*	Yes*	Yes*
MISC	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*
Sealand	Yes	Yes	Yes	Yes*	Yes*	Yes*
Spliethoff	Yes	Yes	Yes	Yes	Yes	Yes
Wilhelmsen Lines	Yes	Yes	No	Yes	Yes	No

\* Via Transshipment

## Non-Conference Lines Currently Operating in the ANSCON Trade - March 1999

Non-Conference Lines	From Australia							Japan									Korea
	Adelaide	Brisbane	Fremantle	Melbourne	Newcastle	Sydney	Tasmania	Hakata	Kobe	Moji	Nagoya	Osaka	Shimizu	Tokyo	Tomakomai	Yokohama	Busan
<b>Cape Line</b>		●		●		●						●					●
<b>China Shipping Container Line</b>		●		●		●		●		●							Via HK
<b>Cho Yang Line/Maersk/ Sealand</b>	Via Melb	●		●		●	Via Syd	●				●					●
<b>COSCO</b>		●				●			●								●
<b>Evergreen</b>		●	●	●		●					Via Sing	Via Sing		Via Sing			Via Sing
<b>Hanjin Line</b>	Via Melb	●	●	●		●		Via Sing		Via Sing	Via Sing	Via Sing	Via Sing				
<b>Maersk - West Coast</b>			●					Via Sing	Via Sing		Via Sing	Via Sing					Via Sing
<b>MSC</b>	Via Melb	●	Via Syd	●		●						●					●
<b>MISC</b>	●	Via Syd	●	●		●	●	Via Sing	Via Sing		Via Sing	Via Sing	Via Sing	Via Sing			Via Sing
<b>Splithoff</b>		●	●	●		●			●								●
<b>Wilhelmsen Lines</b>	Via Melb	●	●	●	●	●			●		●						●

● Notates direct ports of call.

**Schedule Comparison - ANSCON and Major Competitors  
Average Variation per Sailing\***

**Period: January to December 1998**

<b>Japan/Korea</b>	<b>Load Port</b>			
	<b>Syd</b>	<b>Melb</b>	<b>Bris</b>	<b>Total</b>
<b>Line</b>				
<b>Blue Star (Asia)/Cho Yang/Maersk</b>				
Total No. of Sailings	45	44	45	134
Total No. of Days Variation	52	58	52	162
Average Variation per Sailing	1.16	1.32	1.16	1.21
<b>COSCO</b>				
Total No. of Sailings	50	49	50	149
Total No. of Days Variation	35	28	30	93
Average Variation per Sailing	0.70	0.57	0.60	0.62
<b>MSC</b>				
Total No. of Sailings	51	49	51	151
Total No. of Days Variation	113	109	123	345
Average Variation per Sailing	2.22	2.22	2.41	2.28
<b>ANSCON</b>				
Total No. of Sailings	49	50	51	150
Total No. of Days Variation	22	53	6	81
Average Variation per Sailing	0.45	1.06	0.12	0.54

<b>East Asia</b>	<b>Load Port</b>			
	<b>Syd</b>	<b>Melb</b>	<b>Bris</b>	<b>Total</b>
<b>Line</b>				
<b>FESCO</b>				
Total No. of Sailings	50	49	50	149
Total No. of Days Variation	86	72	69	227
Average Variation per Sailing	1.72	1.47	1.38	1.52
<b>COSCO</b>				
Total No. of Sailings	53	52	52	157
Total No. of Days Variation	120	99	104	323
Average Variation per Sailing	2.26	1.90	2.00	2.06
<b>MSC</b>				
Total No. of Sailings	51	49	51	151
Total No. of Days Variation	113	109	123	345
Average Variation per Sailing	2.22	2.22	2.41	2.28
<b>ANSCON</b>				
Total No. of Sailings	50	50	50	150
Total No. of Days Variation	71	62	58	191
Average Variation per Sailing	1.42	1.24	1.16	1.27

\* Compares advertised sailing dates one month out with actual departure dates.

**Comparison of Transit Times to Japan & Korea  
By Direct Callers - March 1999**

<b>EX SYDNEY</b>	YHM	YKI	NGO	OSA/KOB	BUS
ANSCON (A)	13 *	17 *	17 *	15 *	20 *
ANSCON (B)	13 *	17 *	17 *	15 *	20 *
COSCO	27			29	31
Maersk/Cho Yang/Sealand	17			19	21
MSC	18			20	22
Wilhelmsen (E)	29		28	27	
Wilhelmsen (W)	32		31	30	

<b>EX ADELAIDE</b>	YHM	YKI	NGO	OSA/KOB	BUS
ANSCON (A)	16 *	20 *	20 *	18 *	23 *

<b>EX MELBOURNE</b>	YHM	YKI	NGO	OSA/KOB	BUS
ANSCON (A)	19	23	23	21	26
ANSCON (B)	18	22 *	22 *	20	25
Maersk/Cho Yang/Sealand	13 *			15 *	17 *
MSC	14			16	18
Wilhelmsen (E)	33		32	31	
Wilhelmsen (W)	36		35	34	

<b>EX BRISBANE</b>	YHM	YKI	NGO	OSA/KOB	BUS
ANSCON (A)	10	14	14	12	17
ANSCON (B)	9 *	13 *	13 *	11 *	16
COSCO	13			15	17
Maersk/Cho Yang/Sealand	9 *			11 *	13 *
MSC	9 *			11 *	13 *
Wilhelmsen (E)	26		25	24	
Wilhelmsen (W)	30		29	28	

\* Denotes fastest transit

Wilhelmsen (E) : When Wilhelmsens call Brisbane as last Australian load port.

Wilhelmsen (W) : When Wilhelmsens call Fremantle as last Australian load port.

The two figures shown for ANSCON relate to times achieved under Rotation A and Rotation B

**Comparison of Transit Times to East Asia  
By Direct Callers - March 1999**

<b>EX SYDNEY</b>	KEE	KAO	HK	MAN
ANSCON	18 *	17 *	21	26
China Shipping Container Line			20	17
COSCO			22	19
FESCO			17 *	13 *
Maersk/Cho Yang/Sealand		23		
MSC			27	
Wilhelmsen (E)			19	
Wilhelmsen (W)			23	

<b>EX MELBOURNE</b>	KEE	KAO	HK	MAN
ANSCON	15 *	14 *	17	22
China Shipping Container Line			17 *	14 *
COSCO			18	15
FESCO			19	15
Maersk/Cho Yang/Sealand		20		
MSC			23	
Wilhelmsen (E)			23	
Wilhelmsen (W)			26	

<b>EX BRISBANE</b>	KEE	KAO	HK	MAN
ANSCON	11 *	10 *	14	19
China Shipping Container Line			13 *	10 *
COSCO			13 *	10 *
FESCO			14	10 *
Maersk/Cho Yang/Sealand		16		
MSC			18	
Wilhelmsen (E)			16	
Wilhelmsen (W)			20	

\* Denotes fastest transit

Wilhelmsen (E) : When Wilhelmsens call Brisbane as last Australian load port.

Wilhelmsen (W) : When Wilhelmsens call Fremantle as last Australian load port.

## ANSCON & Competitors' Weekday Departures/Arrivals from/to Direct Ports of Call - March 1999

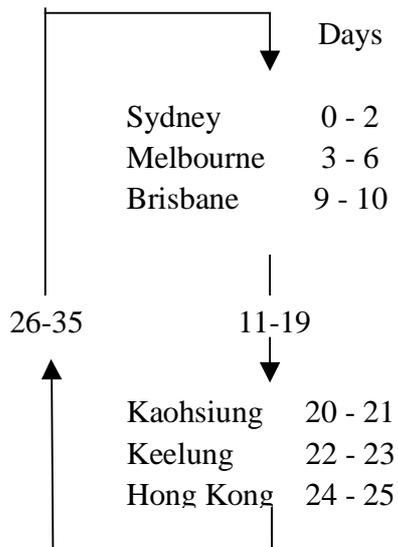
Shipping Line	From Australia						Japan							Korea
	Adelaide	Brisbane	Fremantle	Melbourne	Newcastle	Sydney	Hakata	Kobe	Moji	Nagoya	Osaka	Yokkaichi	Yokohama	Busan
<b>ANSCON - Loop A</b>	Sat (1)	Sat		Wed		Tue				Fri	Wed	Fri (1)	Sun	Mon
<b>ANSCON - Loop B</b>		Sat		Thu		Tue	Tue			Fri	Wed	Fri (1)	Sun	Mon
<b>China Shipping Container Line</b>		Tue		Fri		Tue (1)	Tue		Mon					
<b>Cho Yang Line/Maersk/ Sealand</b>		Wed		Sat		Wed (1)	Mon				Sat		Thu	Mon
<b>COSCO</b>		Mon				Wed		Thur					Mon	Sat
<b>MSC</b>		Tue		Thu		Sun					Sat		Thu	Mon
<b>Wilhelmsen Lines*</b>		Fri (1)	Fri	Sat	Wed	Tue		Wed		Thu			Fri	

Notes

1. \*Do not adhere to a fixed weekday departure schedule.
2. Where the day of the week departure/arrival is notated as being on the same day for two different ports of call, such port calls are 7 days apart; (1) indicates the earlier port call.

## ~~1998 ANSCON Service Rotations~~

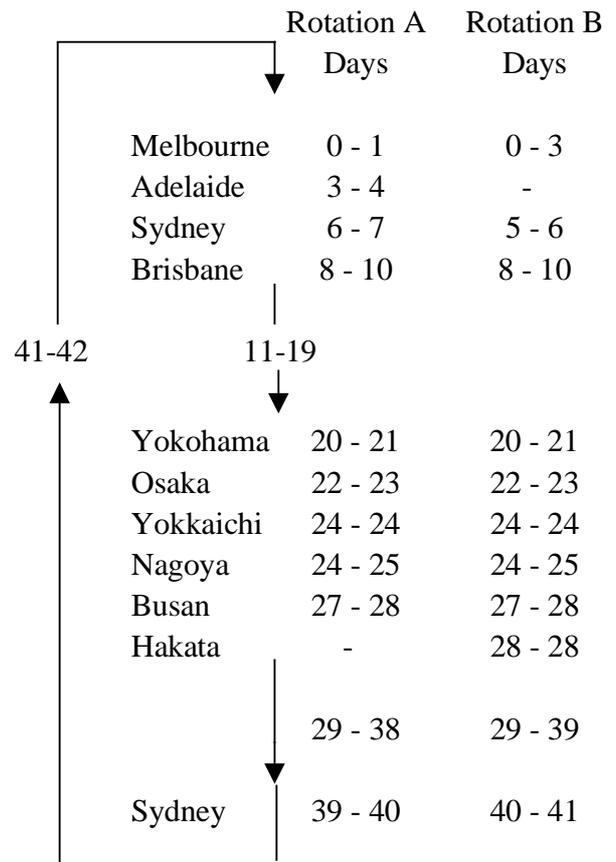
### East Asia



35 Day Round Voyage

Weekly Sailings

### Japan/Korea



42 Day Round Voyage

Weekly Sailings

**AUSTRALIA TO SOUTH EAST ASIA TRADE – 1993**

**VESSEL CAPACITIES – CONFERENCE**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<i>ANL (ANRO)</i>	Anro Australia	300	1,088	1,388	3.5
		300	1,088	1,388	
<i>ASCL (ANRO)</i>	Anro Asia Ostfriesland	304	1,096	1,400	3.5
		100	-	525	
		404	1,096	1,925	
<i>NOL (ANRO)</i>	Anro Temasek Anro Fremantle	300	1,086	1,386	3.5
		200	600	800	
		500	1,686	2,186	
<i>DJL (ANRO)</i>	Anro Jayakarta Anro Gowa	150	1,002	1,152	3.5
		100	1,052	1,152	
		250	2,054	2,304	
<i>MISC</i>	Bunga Delima Bunga Bidara Bunga Kenari	150	1,050	1,200	3.0
		150	1,050	1,200	
		150	1,050	1,200	
		450	3,150	3,600	
<i>NLL</i>	Nedlloyd Java	140	1,320	1,460	2.0
		140	1,320	1,460	
<b>CONFERENCE TOTAL</b>		<b>2,044</b>	<b>10,394</b>	<b>10,677</b>	

**AUSTRALIA TO SOUTH EAST ASIA TRADE – 1993**

**VESSEL CAPACITIES – NON-CONFERENCE**

LINE	SHIP	CAPACITIES (TEUs)			MONTHLY FREQUENCY (APPROX.)
		DRY	REEFER	TOTAL	
<b><u>EAST AUSTRALIA</u></b>					
<b>NYK/HANJIN SHIPPING</b> <b>LLOYD TRIESTINO/RCL</b>	Hanjin Cheju	N/A	N/A	N/A	
	Olandia	50	952	1,002	
	Planeta	120	482	602	
	Premier	200	450	650	
	Prospect	200	450	650	
			570	2,334	2,904
<b>COSCO</b> <i>(CHINA OCEAN SHIPPING CO)</i>	Long Hai he	21	715	736	
	Robin	21	715	736	
		42	1430	1472	2
<b>COMPAGNIE GENERALE MARITIME</b> <i>(see Europe Non-Conference details)</i>	CGM Rimbaud	100	1,446	1,546	
	CGM Racine	100	1,446	1,546	
	CGM Rabelais	150	1,618	1,768	
	CGM Ronsard	150	1,311	1,461	
	CGM Renoir	100	1,446	1,546	
			600	7,267	7,867
<b>EAGLE CONTAINER LINE</b> <b>CONSHIP</b> <i>(see Europe Non-Conference details)</i>					
<b>WILHELMSSEN LINES</b> <i>(see Europe Conference details)</i> <i>[small reefer consignments are lifted from time to time on behalf of Coalainers]</i>					
<b>ZIM LINES</b> <i>(see Europe Non-Conference details)</i>					
<b>SOUTHERN CROSS LINE</b> <i>(VIA HONG KONG, TAIWAN)</i> <i>(see Japan/Korea non-Conference details)</i>					
<b><u>WEST AUSTRALIA</u></b>					
<b>EAC LINES</b> <i>(VIA HONG KONG, TAIWAN)</i>	Swan Reefer	130	330	460	
	Kelang Reefer	130	330	460	
		260	660	920	2
<b>STATESHIPS OF WA</b>	Frank Konecuy	30	120	150	
	Roberta Jull	30	120	150	
		60	240	300	2.5

1993

**SHIP CAPACITIES - AUSTRALIA TO SOUTH EAST ASIA TRADE**

**CONFERENCE & NON-CONFERENCE LINES**

Line	Total Capacity TEUs		Number of Ships	Monthly Frequency (approx)	Av. Space Avail per Month TEUs	
	Reefer	Dry			Reefer	Dry
<b><u>EAST AUSTRALIA</u></b>						
NYK/HANJIN SHIPPING )	570	2,334	4	varies		
LLOYD TRIESTINO/RCL)						
COSCO	42	1,430	2	2	42	1,430
CGM	600	7,267	5	1	120	1,453
<b><u>EAGLE CONTAINER LINE)</u></b>						
CONSHIP )	580	11,569	10	4	232	4,628
WILHELMSSEN LINES		18,304*	9	2	0	4,068
ZIM LINES	225	5,118	6	2	75	1,706
SOUTHERN CROSS LINE		2,200*	4	1.5	0	825
<b><u>WEST AUSTRALIA</u></b>						
EAC LINES	260	660	2	2	260	660
STATESHIPS OF WA	60	240	2	2.5	75	300
<b>TOTAL - NON-CONF</b>	<b>2,337</b>	<b>28,618</b>	<b>44</b>	<b>17</b>	<b>Av. 615</b>	<b>11,057</b>
<b><u>CONFERENCE</u></b>						
ANL (ANRO)	300	1,088	1	3.5	1,050	3,808
ASCL (ANRO)	404	1,096	2	3.5	707	1,918
NOL (ANRO)	500	1686	2	3.5	875	2,951
DJL (ANRO)	250	2054	2	3.5	438	3,595
MISC	800	6256	3	3	800	6,256
NLL	140	1,320	1	2	280	2,640
<b>TOTAL CONF</b>	<b>2,394</b>	<b>13,500</b>	<b>11</b>	<b>19</b>	<b>Av. 4,549</b>	<b>23,318</b>
<b>TRADE TOTAL</b>	<b>4,731</b>	<b>42,118</b>	<b>55</b>	<b>36</b>	<b>Av. 1,489</b>	<b>27,568</b>

NB

\* This figure represents total for both dry and reefer as split not known

1993

**TRANSIT TIMES TO SOUTH EAST ASIA**

AVERAGE BASED ON SAILINGS ADVERTISED IN DCN MAY 1993 EX MELBOURNE

LINE	Jakarta	Singapore	P.Kelang	Penang	Bangkok
ANRO	9-13*	12-16*	13-17*	15-19*	16-20*
MISC/NLL	22	15*	16	19	18-19
NYK/HANJIN/LT	19-21	11-13	14-16	14-16	15-17
COSCO	14-15	16-17			
CGM	15-16				
EAGLE CONTAINER LINE <i>(via Taiwan/Hong Kong)</i>	28	24	25-27	27	28
ZIM <i>(via Japan, Korea, Taiwan, KH)</i>		30-32			
WILHELMOSEN		16-24*			21-29*
SOUTHERN CROSS <i>(new entry into trade)</i>		18	17		22

\* Transit times depend on routing of vessels through various ports

**AUSTRALIA TO SOUTH EAST ASIA TRADE - 1998**

**VESSEL CAPACITIES - TFG**

<u>Line (Consortium)</u>	<u>Ship</u>	<u>Capacities</u>			<u>Monthly Frequency (Approx)</u>
		<u>Dry</u>	<u>Reefer</u>	<u>Total</u>	
Hanjin /LT/RCL/Evergreen	Nuova Mediterranean	1374	176	1550	
	Nuova Nipponica	1374	176	1550	
(ASA Consortium)	Jitra Bhum	640	190	830	
	Itha Bhum	640	190	830	
	Kama Bhum	640	190	830	
	Ever Ally	665	200	865	
	Ganta Bhum	540	160	700	
	Hanjin Cheju	766	94	860	
		<b>6639</b>	<b>1376</b>	<b>8015</b>	<b>8</b>
MISC/MOL/OOCL/PIL	Libra Australia	910	200	1110	
(AAA Consortium)	Bunga Teratai Satu	980	240	1220	
	Bunga Teratai Dua	980	240	1220	
	Bunga Teratai 3	980	240	1220	
	Kota Pertama	855	200	1055	
	Kota Perwira	855	200	1055	
	OOCL Acclaim	800	200	1000	
	OOCL Ability	800	200	1000	
		<b>7160</b>	<b>1720</b>	<b>8880</b>	<b>8</b>
ANL/P&O Nedlloyd/APL/NYK/DJL					
(AAX Consortium)	APL Ivory	1667	250	1917	
	APL Emerald	1667	250	1917	
	Australian Enterprise	1400	250	1650	
	Kasuga One	1660	200	1860	
	P&O Nedlloyd Brisbane	1850	250	2100	
		<b>8244</b>	<b>1200</b>	<b>9444</b>	<b>4</b>
Maersk (W.A. service)	Klang Reefer	150	150	300	
	Swan Reefer	150	150	300	
		<b>300</b>	<b>300</b>	<b>600</b>	<b>4</b>
K Line (W.A. service)	Orchid Bridge	1208	100	1308	
	Malaysian Bridge	1208	100	1308	
	Singapore Bridge	964	100	1064	
	Java Bridge	964	100	1064	
	Fremantle Bridge	964	100	1064	
		<b>5308</b>	<b>500</b>	<b>5808</b>	<b>4</b>
<b>TFG TOTAL</b>		<b>27,651</b>	<b>5096</b>	<b>32,747</b>	

Please note all the above Lines accept cargo to other Trade areas which is usually transhipped at Singapore. Therefore the total amount of space indicated above is not dedicated to the Australia/South East Asia Trade.

**AUSTRALIA TO SOUTH EAST ASIA TRADE - 1998**

**VESSEL CAPACITIES - NON-TFG**

<u>Line (Consortium)</u>	<u>Ship</u>	<u>Capacities</u>			<u>Monthly Frequency (Approx)</u>	
		<u>Dry</u>	<u>Reefer</u>	<u>Total</u>		
PIL/MISC (serving Brisbane only)	Kota Harta	633	200	833		
	Kota Hasil	633	200	833		
	Bunga Terasek	960	150	1110		
	Bunga Kenari	960	150	1110		
		<b>3186</b>	<b>700</b>	<b>3886</b>	<b>2</b>	
OSCL/CGM/Marfret	Contship London	1900	300	2200		
	Contship Washington	1900	300	2200		
	Contship Rome	1900	300	2200		
	Contship Auckland	1900	300	2200		
	Marfret Provence	1900	300	2200		
	CGM Cezanne	1900	300	2200		
	CGM Renoir	1900	300	2200		
	CGM Gaugin	1900	300	2200		
			<b>15,200</b>	<b>2400</b>	<b>17,600</b>	<b>3</b>
	Contship - Eagle	Contship Romance	2458	300	2758	
Contship Ambition		2390	500	2890		
Contship Vision		2458	300	2758		
Contship Action		2390	500	2890		
Contship Nobility		2458	300	2758		
Contship Optimism		2458	300	2758		
		<b>14,612</b>	<b>2200</b>	<b>16,812</b>	<b>2</b>	
Wilhelmsen	Tampa	2251	200	2451		
	Talabot	1686	120	1806		
	Tampere	1694	120	1814		
	Texas	2251	200	2451		
	Taiko	2251	200	2451		
	Tourcoing	1747	120	1867		
	Tapiola	1747	120	1867		
	Toba	1686	120	1806		
	Taronga	2700	200	2900		
			<b>18,013</b>	<b>1400</b>	<b>19,413</b>	<b>2</b>
P&O Nedlloyd	P&O Nedlloyd Jakarta	1656	350	2006		
	P&O Nedlloyd Auckland	1656	350	2006		
	P&O Nedlloyd Genoa	1656	350	2006		
	P&O Nedlloyd Sydney	1656	350	2006		
	P&O Nedlloyd Marseilles	1656	350	2006		
		<b>8280</b>	<b>1750</b>	<b>10,030</b>	<b>2</b>	
		<b>59,291</b>	<b>8450</b>	<b>67,741</b>		

Please note all the above Lines accept cargo to other Trade areas which is usually transhipped at Singapore. Therefore the total amount of space indicated above is not dedicated to the Australia/South East Asia Trade. In addition, some of the above non-TFG Lines serve New Zealand as well as Australia.

**AUSTRALIA TO SOUTH EAST ASIA - 1998**

**TFG & non-TFG LINES - SHIP CAPACITIES/SPACE AVAILABILITY**

<u>Line/Consortia</u>	<u>Total Capacity</u>		<u>No. Ships</u>	<u>Mthly Freq (approx)</u>	<u>Av. Space/mth</u>	
	<u>Dry</u>	<u>Reefer</u>			<u>Dry</u>	<u>Reefer</u>
<b>1. TFG</b>						
ASA	6639	1376	8	8	6639	1376
AAA	7160	1720	8	8	7160	1720
AAX	8244	1200	5	4	6595	960
Maersk (WA service)	300	300	2	4	600	600
K Line (WA service)	5308	500	5	4	4246	400
<b>Total TFG</b>	<b>27,651</b>	<b>5096</b>	<b>28</b>	<b>28</b>	<b>25,240</b>	<b>5056</b>

<u>Line/Consortia</u>	<u>Total Capacity</u>		<u>No. Ships</u>	<u>Mthly Freq (approx)</u>	<u>Av. Space/mth</u>	
	<u>Dry</u>	<u>Reefer</u>			<u>Dry</u>	<u>Reefer</u>
<b>2. NON-TFG</b>						
PIL/MISC (Qld service)	3186	700	4	2	1590	350
OSCL/CGM/Marfret	15,000	2400	8	3	5625	900
Contship - Eagle	14,612	2200	6	2	4870	730
Wilhelmsen	18,013	1400	9	2	4000	310
P&O Nedlloyd - Med.	8280	1750	5	2	3310	700
<b>Total non-TFG</b>	<b>59,090</b>	<b>8450</b>	<b>32</b>	<b>11</b>	<b>19,395</b>	<b>2990</b>
<b>TOTAL TRADE</b>	<b>86,741</b>	<b>13,546</b>	<b>60</b>	<b>39</b>	<b>56,380</b>	<b>8800</b>

**TRANSIT TIMES TO SOUTH EAST ASIA - 1998**

Average based on sailings advertised in DCN, December, 1998, ex Melbourne

<b>Line/Consortia</b>	<b>Jakarta</b>	<b>Singapore</b>	<b>Pt Kelang</b>	<b>Penang</b>	<b>Bangkok</b>
<b>1. TFG</b>					
ASA		12			
AAA	21	13	12	15	18
AAx	18	14	15	20	21
Maersk (WA)	11	6	7	8	11
K Line (WA)	4	6			
<b>2. non-TFG</b>					
PIL/MISC (Qld)			12	13	
OSCL/CGM/Marf	8	11			
Contship - Eagle		10			
Wilhelmsen		10			
		10			

Penang & Bangkok are served by feeder vessel from Singapore. Some Lines/Consortia serve Jakarta by feeder vessel via Singapore.

1993

AUSTRALIA TO NORTH AMERICA TRADE

VESSEL CAPACITIES - CONFERENCE

LINE	SHIP	CAPACITIES (TEUS)			MONTHLY FREQUENCY (APPROX.)
		REEFER	DRY	TOTAL	
ANZDL	Direct Kea	370	1,030	1,400	
	Direct Kookaburra	370	1,030	1,400	
	Direct Falcon	300	600	900	
	Direct Kiwi	300	600	900	
		1,340	3,260	4,600	2.5
BLUE STAR LINE (via U.S. WEST COAST)	Columbia Star	680	654	1,334	
	Oregon Star	620	570	1,190	
		1,300	1,224	2,524	1.3
BLUE STAR LINE (via U.S. EAST COAST)	America Star	680	654	1,334	
	Melbourne Star	680	654	1,334	
	Sydney Star	680	654	1,334	
	Queensland Star	680	680	1,360	
		2,720	2,642	5,362	1.7
COLUMBUS LINE (via U.S. WEST COAST)	Columbus Victoria	490	248	738	
	Columbus Virginia*	490	248	738	
	Columbus Wellington	490	248	738	
		1,470	744	2,214	1.9
COLUMBUS LINE (via U.S. EAST COAST)	Columbus New Zealand	758	619	1,377	
	Columbus America	658	724	1,382	
	Columbus Australia	650	732	1,382	
		2,066	2,075	4,141	1.7
<b>CONFERENCE TOTAL</b>		8,896	9,945	18,841	

\* To be replaced by "Columbus California" total TEU capacity 1,185)

1993

SHIP CAPACITIES - AUSTRALIA TO NORTH AMERICA TRADE

CONFERENCE LINES

Line	Total Capacity TEUs		Number of Ships	Monthly Frequency (approx)	Av. Space Avail. per Month TEUs	
	Reefer	Dry			Reefer	Dry
<b>ANZDL</b>	1,340	3,260	4	2.5	838	2,038
<b>BLUE STAR LINE</b> <i>(VIA US W.COAST)</i>	1,300	1,224	2	1.3	845	796
<b>BLUE STAR LINE</b> <i>(VIA US E.COAST)</i>	2,720	2,642	4	1.7	1,156	1,123
<b>COLUMBUS LINE</b> <i>(VIA US W.COAST)</i>	1,470	744	3	1.9	931	471
<b>COLUMBUS LINE</b> <i>(VIA US E.COAST)</i>	2,066	2,075	3	1.7	1,171	11,489
<b>TOTAL CONF</b>	8,896	9,945	16	9	Av. 5,060	16,007

1993

**TRANSIT TIMES TO NORTH AMERICA**

CONFERENCE AND NON-CONFERENCE  
(days transit from last Australian Load Port)

LINE	Philadelphia	Jacksonville	Norfolk	Charleston	Boston	New York	Houston	Seattle	San Francisco	Los Angeles	Honolulu
AUSDA (CONFERENCE)	29	33	32	31	29	28	31	21	22	24	15
COOL CARRIERS										26 / 35*	
WILHELMSSEN			66							46	
MSC			47								
NEDLLOYD (IMT)									35	37	
ABC	36			36			24				
SPI									30	32	17

\* To Pt.Hueneme, CA, via N.S.W. Australia/via S.E. Australia

**SAILING FREQUENCIES TO NORTH AMERICA**

CONFERENCE AND NON-CONFERENCE

Line	1 SAILING PER (DAYS)
AUSDA (CONFERENCE)	3.6
COOL CARRIERS	**
WILHELMSSEN	11.4
MSC	11
NEDLLOYD (IMT)	27
ABC	18
SPI	25
COSCO	11
CGM	15

\*\* Irregular service - only 1 sailing in first 5 months of 1993

**AUSTRALIA TO NORTH AMERICA TRADE - 1999**

**Vessels Capacities - Conference**

	Vessels	Capacities - TEUs			Monthly Frequency
		Dry	Refrig	Total	
<b>ANZDL</b> (via US West Coast)	Direct Kea	1080	320	1400	4.3
	Direct Kookaburra	1080	320	1400	
	Direct Falcon	1500	200	1700	
	Direct Kiwi	1500	200	1700	
	Direct Eagle	1500	200	1700	
	Direct Jabiru	586	214	800	
	Direct Condor	1320	260	1580	
	<b>Total</b>	<b>8566</b>	<b>1714</b>	<b>10280</b>	
<b>P&amp;O Nedlloyd</b> (via US West Coast)	Argentina Star	710	290	1000	2.0
	Columbia Star	401	449	850	
	P&O Nedlloyd Los Angeles	691	309	1000	
	<b>Total P&amp;ONL</b>	<b>1802</b>	<b>1048</b>	<b>2850</b>	
<b>Columbus Line</b> (via US West Coast)	Columbus Coromandel	1398	205	1603	2.5
	Columbus Florida	1398	205	1603	
	Columbus America	728	654	1382	
	Cap Vilano	1258	220	1478	
	<b>Total Columbus</b>	<b>4782</b>	<b>1284</b>	<b>6066</b>	
<b>P&amp;O Nedlloyd</b> (via US East Coast)	America Star	375	680	1055	1.7
	Sydney Star	375	680	1055	
	Melbourne Star	375	680	1055	
	Queensland Star	375	680	1055	
	<b>Total</b>	<b>1500</b>	<b>2720</b>	<b>4220</b>	
<b>Columbus Line</b> (via US East Coast)	Columbus Canada	707	508	1215	2.1
	Columbus Canterbury	707	508	1215	
	Columbus Australia	728	654	1382	
	Columbus Victoria	570	620	1190	
	Columbus Queensland	534	656	1190	
	Columbus California	531	622	1153	
	<b>Total</b>	<b>3777</b>	<b>3568</b>	<b>7345</b>	
<b>Conference Total</b>		<b>20427</b>	<b>10334</b>	<b>30761</b>	

**SHIP CAPACITIES - AUSTRALIA TO NORTH AMERICA TRADE - 1999**

**CONFERENCE LINES**

Line	Total Capacity TEUs		Number of Ships	Monthly Frequency (Approx.)	Av. Space avail per month TEUs	
	Reefer	Dry			Reefer	Dry
<b>ANZDL</b>	1714	8566	7	4.3	1053	5262
<b>P&amp;O Nedlloyd Limited</b> <i>via US West Coast</i>	1048	1802	3	1.9	664	1141
<b>P&amp;O Nedlloyd Limited</b> <i>via US East Coast</i>	2720	1500	4	1.5	1020	563
<b>Columbus Line</b> <i>via US West Coast</i>	1284	4782	4	2.5	803	2989
<b>Columbus Line</b> <i>via US East Coast</i>	3568	3777	6	2.3	1368	1448
<b>TOTAL CONFERENCE</b>	10334	20427	24	12.5	5382	10639

\*\* Coolcarriers operate a joint service with Seatrade (Scaldis) with conventional refrigerated vessels ex Queensland only to Philadelphia. Service is seasonal and irregular thus sailing frequency is average over most recent year

**TRANSIT TIMES TO NORTH AMERICA - 1999**

CONFERENCE AND NON-CONFERENCE  
(Days transit from last Australian Load Port)

Line	Sailing Frequency	Philadelphia	Savannah	Newport News	Baltimore	Norfolk	Charleston	New York	Houston	Seattle	San Francisco/Oakland	Los Angeles Long Beach	Honolulu
<b>AUSCLA</b> (Conference)	2.5	32	36			34			40		20	22	24
<b>C&amp;S Shipping *</b> (Incl Cool Carriers and Scaldis)	20												
<b>MSC</b>	7	41		41	40		43	38					
<b>FESCO</b>	7									25	30	20	
<b>BHP/IMTL **</b>												21	

\* Cool Carriers operate a joint service with Seatrade (Scaldis) utilising conventional refrigerated ships serving North Queensland and occasionally brisbane to Philadelphia, PA. The service is seasonal and irregular, tus the service frequency is an estimate only.

\*\* BHP operate a breakbulk service primarily to ship BHP's steel products to North America. In addition, they transport other bulk cargoes such as forestry products. Ports served and port rotation varies frequently according to the demands of the available cargo. Only a small volume of cargo is carried in containers.

**AUSTRALIA MIDDLE EAST GULF AND WEST INDIA/PAKISTAN/SRI LANKA**

**DIRECT AND TRANSHIPMENT SERVICES AS ADVERTISED - 1999**

YEAR	TRADE AREA	LINE	SERVICE
1993	<b>Middle East Gulf</b>	NYK/P&O Nedlloyd	Direct Conference service
		OOCL	Transhipment via Kaohsiung
		PIL	Transhipment
		IRISL	Direct - on inducement only.
		MISC	Transhipment
1993	<b>West India/Pakistan/Sri Lanka</b>	NYK/P&O Nedlloyd	Direct Conference service
		Contship	Transhipment
		MISC	Transhipment to ISC ports
		PIL	Transhipment to ISC ports
		Zim	Transhipment

1998	<b>Middle East Gulf</b>	NYK/P&O Nedlloyd	Direct Conference service
		APL	Transhipment
		CMA	Transhipment
		Evergreen	Transhipment
		Maersk	Transhipment
		MISC	Transhipment
		OOCL	Transhipment
		PIL	Transhipment
		YML	Transhipment
1998	<b>West India/Pakistan/Sri Lanka</b>	NYK/P&O Nedlloyd	Direct Conference service
			All the following are transhipment services
		APL	ISC
		CGM	ISC and Pakistan
		Contship	ISC, Pakistan, Sri Lanka
		Hanjin	ISC, Sri Lanka, Bangladesh
		Evergreen	ISC, Pakistan, Sri Lanka
		Hapag-Lloyd	ISC, Sri Lanka
		MOL	ISC
		MSC	ISC
		OOCL	ISC
		PIL	ISC, Sri Lanka, Bangladesh
		RCL	ISC, Sri Lanka
		YML	ISC
	Zim	ISC, Sri Lanka, Bangladesh	

AUSTRALIA MIDDLE EAST GULF AND WEST INDIA/PAKISTAN/SRI LANKA

**COMPARATIVE EXPORT LIFTINGS**

TRADE AREA	CARGO	1993/94	1997/98
		% of Total Liftings	% of Total Liftings
<b>Australian Middle East Gulf</b>	Reefer	29%	25%
Ports served direct: Muscat	Foodstuffs	29%	30%
Dubai	General	42%	45%
Dammam			
Kuwait			
Bahrain			
<b>West India/Pakistan/Sri Lanka</b>	Reefer	3%	8%
Ports served direct: Bombay	Beverages	4%	31%
Karachi*	and Foodstuffs		
Colombo	General	71%	42%
	Wool	22%	19%

\*Karachi withdrawn as a direct call in 1994

**AUSTRALIA MIDDLE EAST GULF AND WEST INDIA/PAKISTAN/SRI LANKA**

**SHIPS EMPLOYED**

CAPACITY				CAPACITY			
AS AT DEC 1993	REEFER TEUS	GENERAL TEUS	VOYAGES COMPLETED IN 1993	AS AT DEC 1998	REEFER TEUS	GENERAL TEUS	VOYAGES EXPECTED TO BE COMPLETED IN 1998
"Prospect"	200	450	6	"P&O Nedlloyd Melbourne"	280	770	5
"New Zealand Star"	238	412	5	"P&O Nedlloyd Lyttelton"	280	770	5
"Freshwater Bay"	218	732	5	"Hotaka Maru"	280	770	6
"Prestige"	230	820	5	"Provider"	280	1120	6
"Australia Star"	350	250	5				
"Fishguard Bay"	380	620	5				
	1616	3284	31		1120	3430	22

NOTE: Capacity refers to the total useable space available for containers. Actual designed capacity might slightly exceed this figure but due to deadweight and other restrictions, cannot be used.

**MEMORANDUM**

**Re: Shipping Conference Services: Review of  
Part X of the Trade Practices Act 1974**

**Professor James Crawford,  
Whewell Professor of International Law,  
University of Cambridge**

**For: Ebsworth & Ebsworth  
135 King St  
Sydney 2000  
AUSTRALIA**

**13 July 1993**

## MEMORANDUM

### Shipping Conference Services: Review of Part X of the Trade Practices Act 1974

1. I have been asked by Shipping Conference Services to provide advice in relation to the legal and jurisdictional issues which will arise as part of the Review of Part X of the Trade Practices Act 1974 established by the Commonwealth Government. It seemed best to do this in the form of a Memorandum which could be provided to the Review. In this Memorandum I deal with the following issues:

- (1) The Case for Retention of Part X
- (2) The Extension of Part X to Regulate Inwards Shipping;
- (3) Particular Improvements to Part X.

2. I should first state my qualifications and role in producing this Memorandum. I am Whewell Professor of International Law in the University of Cambridge, England, and a Fellow of Jesus College, Cambridge. Until February 1992 I held the Challis Chair of International Law at the University of Sydney. I am a Member of the United Nations International Law Commission, having been nominated by Australia for election to the Commission. I am a member of the New South Wales Bar. I advised Shipping Conference Services in 1988-89 on issues related to the introduction of Part X in its present form. Thereafter I worked intensively with Shipping Conference Services, Ebsworth and Ebsworth and member lines in advising on issues which arose during the implementation of Part X. In particular I drafted many of the outwards conference agreements which were registered under Part X. During this process I had some contact with lawyers in the United States, New Zealand and the United Kingdom in relation to conference agreements which gave rise to jurisdictional issues under the equivalent legislation of those countries.

3. I have discussed this Memorandum in draft with Shipping Conference Services. Nonetheless it is based on my own experiences with Part X, and represents my own views.

(1) The Case for Retention of Part X

4. This is the question raised by Issues (a)-(c) of the Issues Paper. A significant part of the case in relation to the retention of Part X is based on economic arguments. These are canvassed in the Meyrick paper, on which I am not qualified to comment (Meyrick & Associates, The Economics of Liner Conferences. A Critical Review of Perceptions

(December 1992)). On the other hand legal and jurisdictional issues arise both with respect to the scope of the legislation and its actual operation, and I do feel competent to comment on both of these questions.

5. On the general question of repeal or retention of Part X, the following comments should be made.

6. Part X was recently enacted, following formal and protracted inquiry. The process of implementation of Part X was extensive and expensive, and the industry has only just settled down to work with it. In the absence of major identified problems and given what I understand to be a broad level of shipper support for it, a strong case for change would need to be made.

7. Australasia is responsible for only about 2% of the world's container trades. We are at the end of long thin trades, and the trading pattern is volatile. We simply lack the economic power of, say, the United States to impose our own economic values and legal controls on foreign parties. No doubt as a matter of jurisdiction we can impose our own requirements, especially with respect to the export trade. But we need to be aware that our actual regulatory or market power is limited. The Scandinavian experience is very relevant here. Australia should do nothing which will tend further to the result that direct shipping services are alienated, and that Australian ports simply become feeder or transshipment ports with major activity centralized elsewhere (e.g. Singapore).

8. It remains the case that no country in the world has simply applied its domestic antitrust laws to conference shipping. Nor is there any prospect that any of the major players (US, EC, Japan) will do so. There is still a strong international consensus on the point. The conclusion reached by the recent Canadian inquiry -- that unilateral action is impractical -- seems to me at least as applicable to Australia. (See Canadian National Transportation Act Review Commission, Report (1993), ch 6.)

9. The conduct of many other States, and especially our Asian trading partners, in maintaining national flag fleets, subsidizing ship construction and operation, insisting on cargo reservation schemes, etc tend to subvert the assumptions underlying the case for repeal of Part X. It is very doubtful whether Australia's interests would be served by an increasingly bilateral approach to liner shipping. But so far in international practice, there has been no accepted third alternative to the conference system or bilateralism. I doubt whether Australia alone can develop such an alternative.

10. Some of the problems currently being experienced abroad could not occur or could be readily remedied under existing Part X. An example is the current complaint to the European Commission relating to the Trans Atlantic Agreement. I do not wish to enter into the merits of that case, but there is no doubt that appropriate action could be taken under Part X in the event of a complaint in relation to equivalent conduct in the Australian trades. Indeed the Minister could take independent action even without a complaint. Sections 46 and 10.05 would also be available in appropriate cases.

11. Present Part X involves a legislative determination that certain specified conference activity (i.e. that set out in s10.08(1)(c) and ss10.19-20 (loyalty agreements)) is prima facie legitimate, and that regulation of that activity is best carried out in the event of a complaint from a shipper, or on a reference from the Minister. To repeal Part X would be in effect to abolish conferences as such, since the activities identified in s10.08(1)(c) and ss10.19-20 are the minimum activities necessary for the conference to operate as such. The Prices Surveillance Authority has suggested (Land-Based Charges Inquiry (1992) para 5.3.1) that the task of distinguishing legitimate from illegitimate conference activity can be carried out under Part IV authorization procedures by the Trade Practices Commission (TPC). But this is disingenuous. First of all, it would be entirely a matter for the TPC to determine, in the exercise of its discretion, which activities to allow and which to disallow. This is a completely different situation from that which now exists under Part X, where certain legislative policies or determinations have been made and expressed. If Part X were repealed, the TPC would proceed, and quite properly, on the basis that this amounted to a legislative determination that essential conference activity was no longer legitimate. Even if particular agreements were allowed (and on this basis it is hard to see how they could be: for example price fixing is per se prohibited by s45A), there would be delay and uncertainty while the process of authorization was carried out.

12. It seems to me that there is a strong case for the retention of Part X, for the reasons set out above. It might be said that the general economic case for repealing Part X outweighs these considerations. But the Inquiry would need to be satisfied that the economic benefits that would flow from repeal would be genuine and not just hypothetical or notional, having regard in particular to the points made in paragraphs 6-9 above, and to the existing regulatory mechanisms under Part X (para 10 above). There are also issues about transitional costs of any new regime (para 6 above).

(2) The Extension of Part X to Regulate Inwards Shipping

13. The Issues Paper (point (d)) expressly raises the question whether and in what ways Part X should be amended to regulate inwards shipping. On this issue the following points should be made:

14. Australian law and policy has traditionally distinguished between inwards and outwards trades, and for good reason. First of all, in the way that international trade is actually carried out, the shipper is almost invariably the exporter.<sup>1</sup> The structure of the trade focuses on the process of exporting. Secondly, Australia's interests in regulating trade are focused on its export trade. There is thus a strong interest in the recognition on the part of other countries of Australia's primary interest in the regulation of its export trade, a recognition that is not likely to be forthcoming unless it is reciprocated. The PSA, unsympathetic though it is to legal arguments, recognizes that it is "a substantially more difficult task to regulate inward trade" and that it is "quite probable that any active regulation of international shipping will encounter jurisdictional problems" (Land-Based Charges Inquiry (1992) para 5.3.2). In fact such problems were encountered, both with United States and Canadian law, at the time of the conclusion of the various North American conference agreements, and with EC law in relation to the European agreements. They were also encountered by the TPA in its recent inquiry into American port service charges.

15. The economic and trading interests represented by Australian shipper organizations are predominantly export interests. This is not just for legal reasons associated with Part X of the Act. These interests are comparatively coherent, and the entities concerned are legally and in most cases actually responsible for negotiating the terms on which shipping services are to be provided. By contrast except in certain sectors importers do not form a coherent group or set of groups. Their involvement in the trade is usually small and often minimal. The ratio of their shipping costs to the value of goods imported is small. To add to existing peak or subsidiary shipping bodies a mass of importer interests would merely tend to diffuse those bodies, and would exacerbate their own problems of organization.

16. The provisions of existing Part X are predicated on the idea that the primary Australian interest is in the export trades, and in the Australian land-based sectors of the import trade. Thus the DSB is to represent the interests of Australian, not foreign shippers (s10.03). Australia can legitimately insist that an Australian DSB is to have a major say in negotiations

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<sup>1</sup> Properly speaking the shipper is the original party to the contract of carriage. In international trading practice this means that the shipper is almost always the exporter, even where the carriage is on f.o.b. terms. A good illustration of the reluctance of the courts to hold otherwise is provided by The Tromp [1921] P 337. See also Heskell v Continental Express Ltd [1950] 1 All ER 1033, 1038.

in relation to the terms of outwards liner shipping, but it is difficult to see how in practical terms it can insist that an Australian DSB is also to have a major say in negotiations in relation to the terms of inwards liner shipping. Either the designated shipper body system has to be watered down in relation to outwards shipping, to a point where it would be practical and legitimate to apply the system equally to both inwards and outwards, or a distinction between the two has to be recognized. Similarly Australia can insist that disputes in relation to the outwards trades be resolved in Australia under Australian law (s10.06(1)), but it is difficult to see how it can insist on a similar provision in relation to imports. Vis-a-vis another country with the same rule, the continuation of a conference system would be excluded, because the two requirements would be incompatible. Thus it would not be sufficient simply to remove the distinction between inwards and outwards shipping from Part X and to leave its substantive provisions unaltered. Either the existing requirements for the outwards trades, which seem to have worked well, must be changed, or a separate system of regulating inwards trades instituted.

17. It follows from the considerations referred to in paragraphs 14-16 that the simple addition of importer interests to existing shipper bodies is not likely to be satisfactory. On the other hand it would no doubt be possible to create a secondary designated shipper body for importers, focusing especially on port service charges and inland charges levied in Australia, an issue of particular concern in relation both to imports and exports.

18. The argument in paragraph 16 is based on the principle that a country, while entitled to protect its own interests in both the export and import trades, should respect the same right of its trading partners. No doubt Australia could act to impose a regime which would conflict with a similar regime imposed by the other trading partner, but the result is likely to be retaliation, the need for some ad hoc settlement between the States concerned, and a corresponding growth in bilateralism in trades where Australia is economically and geographically weakly placed.

19. Another possibility, given the prospect of inconsistent local regulation of an international activity, would be some form of multilateral authority which could assist in resolving disputes. But by and large these disputes are not to be resolved by the application of agreed legal rules. As a matter of law both countries formally have jurisdiction. The real problem is the adjustment of conflicting interests, something which it is difficult to think a multilateral authority would satisfactorily achieve, even if it was desirable in principle.

20. In addition, there is likely to be little or no support for such a multilateral authority, and the search for one even contains elements of paradox, since it is based on a solution

(repeal of Part X or the application of mutually inconsistent liner shipping rules) which rejects the guidance that is offered by the existing international experience.

21. For the reasons given, if it is decided to go ahead and to extend Part X to inwards shipping, careful attention will have to be given to the following questions:

- (a) whether the existing provisions dealing with outwards shipping are internationally defensible, or should be wound back, or
- (b) what lesser and separate regime should be adopted for inwards shipping.

Of course the Act already regulates inwards shipping to some extent, especially under ss46 and 10.04. The real question is, then, what more is required?

22. In this context serious questions arise about how far Part IV itself would apply to inwards shipping, in the absence of Part X. As already noted, in almost all cases the consumer for inwards shipping is the foreign exporter, and it is correspondingly doubtful whether in most cases there is a market in Australia for inwards shipping services (cf TPA s4E).<sup>2</sup> No doubt if the trading arrangements were changed so that the importer became the shipper, there would be a market in Australia. But that is hypothetical. There is no sign that such changes are happening in any large scale way, or would happen if Part X was simply repealed. A potential market is not the same as a hypothetical one.

23. Indeed the repeal of Part X might even have the contrary effect, and would certainly tend to push dispute resolution and negotiations over rates off-shore. In that context, I have been impressed at the impact of s10.06 of the Act, requiring the application to outwards shipping of Australian law and dispute settlement procedures. Foreign carriers have, it is fair to say, been reluctant to change choice of law and choice of forum clauses which have traditionally provided for arbitration outside Australia. But they have been prepared to do so in relation to Australian outwards shipping, as required by s10.06, and on the basis of a consistent distinction in the Act between inwards and outwards shipping. A similar requirement could not be applied to inwards shipping, as explained in paragraph 16. Nor could a provision like s10.06 be included in a single undifferentiated regime for all shipping. An undifferentiated regime would require the dilution of Part X as it stands.

24. It is also worth noting that the argument for the application of Part X to inwards shipping in effect accepts the value of Part X as a vehicle for regulation of the liner trade, and

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<sup>2</sup> Cf Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd (1986) 68 ALR 376.

is inconsistent with the case for repeal. On the other hand, such a change probably requires a substantial extension of the reach of Part X to overseas transactions which affect Australia's import trade generally. Australia has in the past expressed strong opposition to such extensions of jurisdiction by other States (especially the United States, but increasingly also the European Community). This opposition has not been limited to the field of liner shipping. It might be thought ironic that an argument predicated on the idea of continuing exemption from liner shipping from certain provisions of Part IV should require a controversial extension of Part IV to foreign transactions generally, in order potentially to catch the transactions so immunized. The immune tail apparently wags the non-immune dog! At the least, a careful analysis of Australia's overall interests in such an extension of the Act would be required, although it is appreciated that this may go beyond the terms of reference of the present inquiry.

(3) Particular Improvements to Part X

25. From a technical and drafting point of view, on balance Part X has worked reasonably well. Although initial difficulty was experienced with particular issues (especially the scope and language of the exemption for conference rate-making and the definition of varying conference agreements) in most cases it has been possible to draft and operate Part X in such a way as to strike a reasonable balance between the interests of shippers and conferences, and the comparative absence of shipper complaints testifies to this. There is no doubt room for improvement, and I deal below with some areas in which improvements could be made. But I do not believe that major changes are needed. In short, the principle should be that if it is not broken, it does not need to be fixed. There is also the concern that changes in the language of present Part X may cause unforeseen problems.

26. Nonetheless, it may be helpful to canvass some of the issues that have arisen in the course of seeking to give effect to the legislation, from a conference point of view.

(a) *Definition of "conference"*

27. The definition seems to me to be sufficiently flexible and to have worked well. Problems have arisen with the requirement to negotiate minimum service levels in relation to agreements, such as pooling agreements, which are subordinate to conference agreements and to which the concept of minimum service levels does not really apply. However this issue relates more to the question of varying conference agreements, which I discuss below.

32. On the other hand a different view seems to underlie the 1991 amendment relating to freight rates. If that view were to prevail it would, I think, create many difficulties in giving effect to Part X. To take the position of rates, s10.08(c)(i) allows conference agreements to provide for the fixing or other regulation of freight rates, and ss10.14(2) and 10.22(2) extend the exemptions provided by Part X to certain rates involving land transport sectors. Then Part X goes on to give an immunity from ss45 and 47 (except for s47(6) and (7)) in relation to conduct which "gives effect to a provision of [a registered conference agreement] in relation to an outwards liner cargo shipping service" (ss10.17(2), 10.18). I have not seen the advice on which the 1991 amendment was based. But I do not understand why, if a conference agreement authorizes the parties to do something which is sufficiently clearly defined and which would attract immunity under Part X (e.g. to fix certain rates), their doing of that thing does not constitute conduct which gives effect to the agreement. On the interpretation that apparently underlay the 1991 amendment, I do not understand why everything that Member Lines do in the way of providing outwards shipping does not constitute a varying agreement as defined. Such conduct, if it reflects a shared understanding of the conference agreement -- indeed even if it reflects the express terms of such an agreement -- will itself constitute an "arrangement" or "understanding", and thus an agreement as defined in s10.02(1).

33. No doubt the clarification provided by the 1991 amendment on the specific subject of rates was useful. But I would suggest that the Act should distinguish between varying conference agreements in the normal sense of the words (i.e. those which amend or vary a conference agreement: the definition of "vary" in s10.02 is satisfactory for this purpose) and "affecting agreements" (as defined in s10.02(3)). On this basis conferences would have the option of merely notifying the latter under s10.43. Alternatively the broadest and least defined aspects of the definition of "affecting agreements" in s10.02(3) could be deleted, in particular those covered by s10.02(3)(c). It would be desirable, if this change is made, to allow the Registrar to grant confidentiality to notifications of affecting events as well as of conference agreements themselves (cf ss10.34-8). It is anomalous that confidentiality may be available in relation to an agreement but not in relation to an event which affects that agreement, and the anomaly will become even more obvious if the notification provisions in s10.43 are given more work to do.

34. A related issue is that of minor amendments. In my Opinion of 22 March 1989 on the 1989 Bill, a copy of which was provided to the Department, I suggested that:

"Minor varying conference agreements (as determined by the Registrar after consultation with the relevant shipper body) should not have to be provisionally registered, but should be eligible for immediate full registration."

Unfortunately this suggestion was not adopted in Part X. As a result it is necessary to re-negotiate with the designated shipper body under s10.29 every time a varying conference agreement is concluded, even though the agreement has no conceivable effect on the level of services to be provided. It should be possible to work out a system of simple filing or notification of minor agreements, so that if in fact APSA or another relevant shipper body is concerned, it can trigger negotiations, but that if the amendment is thought to be minor or insignificant, the process is streamlined.

(c) *Requirement of Australian law and dispute settlement (s10.06(1))*

35. This is not contained in equivalent overseas legislation. As I have noted already, the requirement could only be justified if limited to outwards shipping.

(d) *Provisions of an agreement which have to pass a overall benefit test before registration: Section 10.08(c) & (d)*

36. Sub-sections 10.08(c) & (d) distinguish between those aspects of conference agreements which are registrable per se (s10.08(c)) and those that are subject before registration to an "overall benefit" test (s10.08(d)). The distinction seems to have worked well.

(e) *Extent of exemption for conference rate-fixing under ss10.14 & 10.22*

37. This has been one of the more difficult issues raised by the language of the Act, especially because of its requirement that the terminal facility be adjacent to a wharf, the corresponding difficulty with LCL cargo, and the problem of what constitutes a "door" in relation to door-to-door services involving such operations as freight consolidation and wool dumping. In my opinion of 22 March 1989 on the 1989 Bill, I said:

"The Bill should permit conferences to set freight rates on a door-to-door or on any lesser basis for all liner cargoes (including less-than-container load (LCL) cargoes), provided that the... shipper (inwards or outwards) has the option of arranging for the Australian land segment of the carriage independently: the Australian land segment should be defined to accord with actual shipping practice, and should not depend (especially in the case of LCL cargoes) on whether the terminal facility is adjacent to the wharf or not. It should be stressed that this would not affect contractual arrangements between carriers and contractors providing services in Australia (e.g.

stevedoring, warehousing, haulage): those arrangements would remain... subject to Part IV."

38. In the event it was possible to develop a system of rate-fixing which complied with the Act and which was nonetheless consistent with shipping practice. My understanding is that this system has worked reasonably well, in part because of the accident that most terminal facilities in Australia are adjacent to a wharf and fall within the limits of a wharf as defined.

(f) *Reasonable provision for withdrawal by a party (s10.06(2))*

39. I understand that the Department accepts, in principle, the Conference view on s10.06(2), which was stated in the following terms:

"What is reasonable notice for the purposes of section 10.06(2) must depend on the nature and intended duration of the agreement in question, and must be a matter on which the parties have some flexibility to tailor their arrangements, having regard to the need to create a stable environment for the commitment of large amounts of capital."

40. In the early stages of implementation of Part X, problems arose through a tendency on the part of the Registrar to adopt a rather rigid interpretation of s10.06(2). There seemed to be an assumption that, because a 6 month notice provision was reasonable in one context, this would become a norm applicable in all cases, including cases of relatively integrated arrangements requiring a considerable commitment of capital. Although these problems were able to be resolved on a case by case basis, this does remain a concern. The Review provides an opportunity to address this issue, and to ensure that a flexible and realistic approach is taken to what constitutes reasonable notice in a given case.

(g) *Registration Procedure*

41. On a number of occasions the Registrar rejected an agreement for a specific reason which could be readily remedied and which did not affect minimum services. It would be convenient if some procedure could be devised to avoid reregistration of the whole agreement, with consequent delay and expense.

42. Inevitably, in the early stages in the implementation of Part X, certain problems did arise. I understand that these have now largely been worked out. Again, however, this does

illustrate the advantage of stability in regulatory arrangements, and the potential costs of wholesale changes to Part X which would simply restart the cycle.

A handwritten signature in black ink, reading "James Crawford". The signature is written in a cursive style with a large initial 'J'.

Whewell Professor of International Law

13 July 1993

## 8. INWARDS SHIPPING

- 8.1 Professor James Crawford in his attached memorandum, paragraphs 13 to 24, deals with this subject. The conference lines adopt his reasoning and conclusions.
- 8.2 This issue has arisen a number of times as far as Australia is concerned and, as mentioned previously, a number of countries have claimed jurisdiction over both inward and outwards trades (as does Australia) but they do not actively regulate their inwards trades, with the exception of the United States of America. However, the United States legislation does not require shipowners to negotiate with ocean carriers on minimum levels of service or freight rates. As long as Australia has restricted these requirements to its outwards trade no insurmountable problems have arisen.
- 8.3 The Overseas Cargo Shipping Legislation Report of October 1977 (the so-called Grigor Report) stated that inward and outward liner shipping must have similar exemptions from Part IV of the Act if the conference system is to operate. Regulating inward shipping, however, was considered to be very difficult because "If all Governments attempted to exercise equal power over inward and outward conferences, chaos would result." The Report did recommend that inward conference agreements should be filed.<sup>1</sup>
- 8.4 However, in introducing the legislation that arose from that Report, the then Minister for Transport, the Hon. Ralph J. Hunt, stated in the Second Reading Speech that "The provisions of Part X apply only to the outwards liner trades from Australia. In view of international legal implications and practical difficulties, the Government has concluded that it should not attempt to regulate inwards shipping."<sup>2</sup>
- 8.5 That legislation was not proceeded with due to united opposition (to other issues in the Bill) from shippers.
- 8.6 In the subsequent 1986 review of Australia's Overseas Liner Shipping Legislation, the potential for jurisdictional problems was also recognised.<sup>3</sup>
- 8.7 The legitimate interest of the Australian Government in the terms and conditions applying to inwards liner shipping was recognised, and it was agreed that legislation applying to liner shipping should at least claim jurisdiction over both inwards and outwards shipping. The new Part X ensured that Section 46 (abuse of market power) and Section 47 (6 & 7) applied to both inwards and outwards shipping. However, the Task Force recommended that those elements of its proposed approach relating to shipowner agreements and shipper bodies be expressly disappplied on the inwards trades.

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<sup>1</sup> Overseas Cargo Shipping Legislation Report, Department of Transport, October 1977, pp.51-53.

<sup>2</sup> Trade Practices Amendment Bill 1980; Overseas Cargo Shipping Provisions; Second Reading Speech by the Hon. Ralph J. Hunt, Minister for Transport, p.3.

<sup>3</sup> Liner Shipping Report 1986, pp.37-38.

- 8.8 The Australian Government, in the past, has taken a strong stand against the "disruption to international comity" represented by the undue extension of foreign anti-trust legislation. As the Australian-United States Agreement of 1982 recognises, this is not just a question of exorbitant claims upon extra-territoriality, e.g. through the "effects doctrine". It is also a matter of the co-ordination of potentially conflicting national policies in areas where two or more countries have legitimate interests. The wholesale extension of Part IV, or Part X, to inwards shipping would conflict with the policies of our overseas trading partners in relation to their outwards conference shipping and be entirely inconsistent with the Australian government policy to-date.
- 8.9 Any real attempt to regulate inward shipping would risk other countries invoking protective legislation. Retaliation in international trade policy is of immediate and growing concern to Australian trade interests. To risk the extension of this problem to the international liner shipping services sector would destabilise the moves to achieve greater international equity in trade issues that Australia supports.
- 8.10 In this environment, then, what is an appropriate degree of regulation of inward shipping? The Prices Surveillance Authority has already investigated costs in Australia for both inwards and outwards shipping.<sup>4</sup> One approach would be for the Department of Transport and Communications to investigate complaints relating to inward shipping for subsequent report to the Minister who, in considering what action to take, would need to take into account possible conflict of law problems. The Government can then consult with the country concerned, as it relates to their outwards trades, to determine if there was any way of resolving the problem which would avoid such conflict. It should be noted that conference member lines have consulted with importers, particularly relating to Port Service Charges in the inwards trades.
- 8.11 To facilitate the consultation process with importers relating to landside costs in Australia, consideration could perhaps be given to the Minister designating certain shipper bodies for the purposes of such consultations, thereby giving them clear exemption from Sections 45 and 47 of the Act to engage in such consultation.
- 8.12 It is not administratively possible to negotiate the same freight rate contract at opposite ends of the world with totally different parties. As Professor Crawford points out in his attached opinion, "Strictly speaking the shipper is the original party to the contract of carriage. In international trading practice this means that the shipper is almost always the exporter, even where the carriage is on F.O.B. terms. A good illustration of the reluctance of the courts to hold otherwise is provided by The Tromp (1921) p.337 (see also Heskell v. Continental Express Ltd [1950]/All 1033, 1038."

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<sup>4</sup> Prices Surveillance Authority Report on Land Based Charges in Australian ports.

**REGULATION OF INTERNATIONAL LINER SHIPPING IN AUSTRALIA'S MAJOR  
TRADING PARTNERS**

- 7.1 Part X is in line with the competition policy regimes as applied to liner shipping by Canada, the European Community, Japan, New Zealand and the United States, and they all follow a consistent pattern in that they all provide anti-trust immunity or exemption from their primary restrictive business practices legislation.
- 7.2 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 to what is an international market for services - a market in which national strategic interests often transcend domestic anti-trust issues.
- 7.3 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; precisely the same would apply to air traffic were it ever to lose its special status.
- 7.4 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, as does Canada; 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.
- 7.5 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 (although, of course, Australia and Canada provide for challenge of agreements after filing).
- 7.6 As referred to previously, the major trade flows are between the US/Pacific rim; US/Europe and Japan/Far East to Europe. It has been estimated by the Council of European and Japanese National Shipowners' Associations (CENSA) that over 50 percent of the liner trades serve the United States, and therefore multi-trade operators must first and foremost consider how to operate within the confines of the US regulatory regime.

**The US Trades**

- 7.7 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. In terms of the exemption from U.S. anti-trust laws accorded conferences and other ocean carrier agreements, it is similar in concept to the block exemption adopted by the E.C. in Regulation No. 4056.

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- 7.8 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.
- 7.9 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.
- 7.10 The U.S. regulations also cover independent operators, who must file copies of their tariff rules and commodity rates with the FMC. Conference rules must allow member lines to take independent rate action, and if they elect to do so those rates must also be filed. Carriers entering into service contracts with shippers must file the essential terms of the contract (including the rate, commodity description, period of shipment and volume) with the FMC. The freight rate for everything carried in the liner trades is thus within the public domain, and discounting is illegal.
- 7.11 Whilst shipowners have viewed the U.S. regime as being somewhat restrictive, they 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.
- 7.12 Except for Canada, mandatory independent rate action is not encountered in other trades. The balance of interest between shippers and carriers in these other regulatory regimes is maintained by an insistence on consultation or negotiations with shippers as a prime condition for anti-trust immunity. This concept does not exist in the U.S. trades, nor is it considered necessary.
- 7.13 The Act was recently reviewed and the Advisory Commission on Conferences and Ocean Shipping reported in April 1992. Agreement could not be reached amongst the Commissioners on any proposed changes to the Act and the status quo was maintained.
- 7.14 It is, nevertheless, interesting to review some of the comments made in that report, e.g. on the carriers' views on the need and benefits of the conference system. The benefits of conferences were seen as:
- a) addressing chronic over-capacity and avoiding destructive competition among carriers;
  - b) providing rate stability and predictability, therefore avoiding extreme rate fluctuations;

- c) avoiding the adverse competitive effects that may arise in an oligopolistic market;
- d) the system addresses international comity considerations and provides an ocean transportation system in harmony with international shipping practices;
- e) it provides administrative support and common rules for its members who are subject to different maritime regulations and customary business practices across nations;
- f) it provides a mechanism for addressing the presence of subsidised foreign carriers in the market;
- g) it encourages the development of an economically sound and efficient U.S. flag liner fleet;
- h) it allows carriers to engage in joint activities which enhance efficiency.<sup>5</sup>

7.15 It is also worth noting that the 1984 Act clearly states the declaration of policy that one of the purposes of the Act is to establish a regulatory regime for U.S. foreign liner trades which is, "in so far as possible, in harmony with, and responsive to, international liner shipping practices".<sup>6</sup>

7.16 The Commission also reviewed the pros and cons of exposing conferences to the United States anti-trust laws. It was recognised that such action could conceivably harm the legitimate goal of rationalisation. The problem foreseen was one of uncertainty and over-deterrence.

7.17 The Commission points out that anti-trust analysis in horizontal cases can be difficult and complex. Even if the participants in a rationalisation agreement believe that they were creating new efficiencies, they could not be totally confident that the anti-trust enforcement agencies would share that view. "As a result, industry members might be deterred from entering into relationships that would enhance efficiency, and might thus forego the chance to create potential consumer benefits." The Advisory Commission went on to suggest that some action could be taken to diminish some [*emphasis added*] of the uncertainty surrounding the Sherman Act enforcement.<sup>7</sup>

### **Canada**

7.18 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 U.S., 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. Conferences

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<sup>5</sup> Advisory Commission on Conferences in "Ocean Shipping", April 1992, p.19.

<sup>6</sup> Ibid, p.29.

<sup>7</sup> Ibid, pp.76-77.

must also file their tariffs and subsequent rate changes, but although these are in the public domain no penalty is imposed for departing from the tariff.

- 7.19 The SCEA permits the Government to designate any organisation within Canada which represents a defined group of shippers as being a group with which outbound conferences must meet upon request.
- 7.20 The Act has recently been reviewed as part of a very comprehensive survey of Canadian transportation legislation covering air, rail and trucking, as well as marine transportation. The Review Commission reported its findings in March 1993.
- 7.21 The report describes SCEA as being, in principle, clearly in conflict with the overall competitive thrust of the National Transportation Act. The Review Commission nevertheless stated that it would be unwise for Canada to end these exemptions now. Its recommendations were:
- a) the Minister for Transport not to repeal the SCEA until such time as the U.S. anti-trust immunity for shipping conferences is withdrawn;
  - b) to reduce to 10 days the notice period for independent rate action by conference members;
  - c) to amend the SCEA to permit shipping conferences to contract for and quote through-rates for pre-carriage or outward land carriage (however, quoting through-rates is already permitted under the SCEA).
- 7.22 The Review Commission's report will be considered by a Transport Canada Working Group which will include industry representatives. It will also be considered by the House of Commons Transport Committee which is expected to report in the not too distant future.
- 7.23 It is interesting that the Commission commented that they believed international action was appropriate and that Canada should not repeal the SCEA until the U.S. and its trading partners are willing to act in concert [*emphasis added*]. They also noted that the SCEA effectively covers only outbound conferences since Canada has no influence on inbound conference activity which originate outside the country.
- 7.24 The Commission noted that conferences do not control Canadian liner trades and do not prohibit or interfere with independent carriers. There was no evidence that conferences had abused their position and that, if conferences were losing their overall market power, they did not dominate Canadian trades but did provide adequate service options for shippers. It was concluded that there was no economic rationale for excluding them from the Canadian trades.<sup>8</sup>
- 7.25 It is also interesting that an industry advisory group comprising both shipper, port and shipowner interests, in its submission to the panel reviewing the National Transportation Act, stated that there continues to exist throughout Canada a lack of

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<sup>8</sup> Canadian National Transportation Act Review Commission Report, March 1993, pp.109-111.

knowledge about SCEA, the nature of shipping conferences, and how they operate. It is believed that this is also a problem in Australia.

- 7.26 Overall, for conference carriers the SCEA gives welcome legal certainty for the provision of ocean and multimodal services.

### **The European Community**

- 7.27 The trigger for an E.C. regulation was the adoption in 1979 of the so-called "Brussels package" which paved the way for E.C. members to become party to the U.N. Code of 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 E.C. Commission to draft a competition regulation for eventual adoption by the Council (i.e. member States). In 1986 the E.C. 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.

- 7.28 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.

- 7.29 The condition is that a conference must not discriminate between ports and transport users by applying different rates and conditions of carriage to the same goods carried in the same area covered by the conference, unless such differences can be economically justified.

- 7.30 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.

- 7.31 In many ways the E.C. 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 U.N. 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).
- 7.40 In February, 1992 the E.C. introduced Regulation No. 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.
- 7.41 These are clear objectives that can only be achieved by following the kind of regulatory approach inherent in Part X.

### **Japan**

- 7.42 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.
- 7.43 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.

- 7.44 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.

### ASEAN

- 7.45 The Liner Shipping Report in 1986 said that the policies of the members of the Association of South-East Asian Nations (ASEAN) have been directed more towards national fleet development. The objective of national fleet development has generally been tempered by an understanding of commercial realities and a desire not to disrupt trade unduly by excessive Government interference.<sup>9</sup>

### New Zealand

- 7.46 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.
- 7.47 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.

### Note 1 to OECD Invisibles Code

- 7.48 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.
- 7.49 In 1987 the Council of the OECD<sup>10</sup> 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:

### Principle 9 - Governmental Supervision of the Trade

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<sup>9</sup> Liner Shipping Report 1986: An Industry Task Force Review of Australia's Overseas Liner Shipping Legislation, pp.74-76.

<sup>10</sup> OECD Maritime Transport Review 1987.

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.

- 7.50 Observance of the above principles is regarded as extremely important in promoting international comity.
- 7.51 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."<sup>11</sup>

7.52 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.<sup>12</sup>

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<sup>11</sup> An Economic Analysis of European Competition Law and Policy, p.16, Professor Sidney Gilman, September 1991.

<sup>12</sup> 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".

**10. UNSUITABILITY OF USING AUTHORISATION PROVISIONS UNDER PART VII OF THE ACT**

- 10.1 As previously mentioned, the industry has many unique characteristics and it is obvious that the ability to set common freight rates amongst the members of a particular co-operative arrangement are essential as they would be in any joint venture. To do otherwise, would undermine the existing shipping arrangements required by the majority of Australian exporters.
- 10.2 The 1977 report on Australia's overseas cargo shipping legislation considered whether it was reasonable for shipowners to be exempted from the whole of Part IV. It was concluded that, with certain recommended qualifications, exemption from Part IV, in total, is consistent with the recognition of conferences and loyalty contracts.<sup>13</sup>
- 10.3 The 1986 Task Force Report considered this issue in much more detail and came to the conclusion that, in terms of practical policy, the Task Force was not convinced that exposing conference agreements to the application of the Trade Practices Act would be the best way of addressing the threat to a competitive market. "Firstly, the reality of world shipping is that conference agreements constitute the routine working arrangements of the majority of liner operators. Secondly, liner shipping is a wholly international industry and, in the case of Australia, mainly overseas owned, and even in its day to day control, subject to the directives of foreign principals. Regulation of liner shipping therefore unavoidably raises unique problems."<sup>14</sup> The views expressed in 1986 are equally relevant in 1993.
- 10.4 Importantly, the Task Force considered that the salient feature is not so much the concentration of market power permitted to conferences as that of creating a regulatory environment where there are sufficient "checks and balances" in the system.
- 10.5 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.
- 10.6 Authorisation can only be granted by the Commission if it is satisfied in all the circumstances that the proposed contract, arrangement or understanding would result, or be likely to result, in the 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 TPC is required to balance the public benefits of the proposed conduct against the detriment to the public that may arise as a result of the conduct.
- 10.7 This, of course, requires a highly balanced judgement and notwithstanding the clear national interest benefits that arise from the conference arrangements, the processes involved in authorisation decisions are lengthy, as the TPC must have regard to all

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<sup>13</sup> Overseas Cargo Shipping Legislation Report, Department of Transport, 1977, pp.41-42.

<sup>14</sup> Liner Shipping Report, 1986, pp.33-34.

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.

- 10.8 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.
- 10.9 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.
- 10.10 An initial approach was made to the 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.
- 10.11 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 now provides 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.
- 10.12 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".
- 10.13 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 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.<sup>15</sup>

- 10.14 All of the outwards agreements registered under Part X would require authorisation; each taking some four to six months minimum to be registered at a direct registration cost of just under \$400,000 (\$7,500 per application) compared to the Part X registration cost of just under \$30,000 (\$570 per application). Groups of shippers would also require authorisation under present arrangements in order to collectively negotiate freight rates.
- 10.15 In essence, the competitive nature and market forces of international shipping demand quick turnround and response times. The likelihood that they will be able to wait during the authorisation process with the TPC is not only doubtful it is probably commercially unworkable in that in the interim period exporters would not have the same guarantee of services, either in frequency or scheduling.
- 10.16 As mentioned previously, the application of Part IV to this international industry could well produce serious conflict of law problems between Australia and its trading partners because such a regime is incompatible internationally.
- 10.17 There is an appeal process against the TPC denying authorisation, but this would impose even greater costs and further delay. Importantly, with the authorisation process there would be disruption to shipping arrangements, but if the authorisations were not granted there would then be serious disruption.
- 10.18 Without authorisation there would be no conferences and it could be expected that one would see an increase in the number of mega-carriers and severe fluctuations in space and service availability, even in the major ports. The smaller ports would fare even worse, with the bigger carriers seeking advantage from the higher volume ports in terms of providing the necessary frequency and shorter transit times to obtain more cargo from their competitors, probably at reduced rates. The end result would be a considerable reduction in the number of carriers in the trade who would then be free to raise freight rates dramatically thereby, in due course, attracting other operators from overseas and the cycle would repeat itself, thereby denying exporters that much needed stability in international liner shipping services.
- 10.19 In 1929, it was as much shippers as shipowners that required some stability and overall efficiency to be brought back into Australia's international liner shipping arrangements, and this would occur again because any experiment with a total dismantling of the current legislative structure would be doomed to failure.
- 10.20 **There could also be a rise in relay services, which could well lead to lower service levels in due course, possibly at higher costs. Whilst there was plenty of space on the carriage leg it could be a worthwhile alternative, but as the main line cargoes grow they would receive priority at the expense of the relay cargoes.**

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<sup>15</sup> Ibid, para. 3.46.

- 10.21 A good example of this occurring has been Scandinavia, which is similarly placed to Australia and New Zealand in being outside the world's major shipping lanes. For example, Gothenburg used to represent the hub port for Scandinavia, but today the port has only one direct caller in the Atlantic and Australian trades and shippers are required to centralise on Rotterdam. Regrettably, the costs are now higher than the previous direct services and the longer transit times and the dual handling of shipments have added to the negative consequences for the exporters involved.
- 10.22 The desire to change the system and subject international liner shipping to the full thrust of Australia's anti-trust legislation would be understandable if there was evidence that there were widespread market distortions, disruption to shipping services, very high freight rate levels and unreliable shipping services. All the evidence points to the contrary, although admittedly not every shipper will ever be satisfied all the time. Neither have shipowners been happy with the lack of the necessary returns to justify reinvestment in this trade.
- 10.23 As outlined at the beginning of this submission, it is important that the objectives of what Australia wants out of its international liner shipping services are clearly stated before considering what the appropriate regime of legislation should be.