

A REVIEW OF PART X OF THE
TRADE PRACTICES ACT 1974

SUBMISSION BY THE
AUSTRALIAN PEAK SHIPPERS ASSOCIATION
TO THE PRODUCTIVITY COMMISSION

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PRINCIPAL CONTACT: FRANK BEAUFORT
POSITION: EXECUTIVE PRESIDENT
ADDRESS: PO Box 244
SOUTH MELBOURNE VIC 3205
PHONE: (03) 9690 9080
(03) 9690 9087

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ABBREVIATIONS

AESA	Australian Exporters Shipping Association
APSA	Australian Peak Shippers Association
ASC	Australian Shippers Council
AUSDA	Australia/USA Discussion Agreement
DPSB	Designated Peak Shipper Body
GRI	General Rate Increases
MLS	Minimum levels of Service
SHIPPERS	Exporters and/or Importers
SMA	Statutory Marketing Authorities
TPA	Trade Practices Act 1974
TPC	Trade Practices Commission

EXECUTIVE SUMMARY

This submission is submitted by the Australian Peak Shippers Association (APSA) which:

- is the designated peak shipper body under Part X of the Trade Practices Act 1974 (TPA)
- represents Australia's Liner Shipping Exporters Generally

The issues dealt with in this submission relate only to the containerised liner trade and conventional shipments.

Australia is a nation of shippers, and the interests of Australian shippers must be balanced against the interests of foreign carriers. It will never be more than a happy coincidence if the interests of carriers and shippers are the same.

There is no doubt that Australian exporters are a diverse group who are largely uncoordinated and who are direct competitors with each other into their foreign markets.

On the other hand, the carriers have considerable power through their conference arrangements which have enabled them to develop an international overview of shipping arrangements, and is the means by which they coordinate their conduct in dealing with Australian shippers.

In other words, the carriers are in a powerful position and with this in mind the imbalance in their favour needs to be redressed towards a more balanced position.

In short, this submission:

Supports the retention of Part X;

This involves the retention of the protection given to exporters in particular under:

- section 10.29
- section 10.41
- section 10.52

Part X is fundamental to the continuing success of Australian exporters in ensuring that:

- carriers participate in negotiations with exporters
- all Australian exporters have access to export markets
- shipping rates are competitive
- carriers are not able to disregard the interests of exporters
- carriers have to provide information to exporters

APSA believes that the removal of Part X exemptions for exporters from Part IV, either partially or totally from the Act would serve only to:

- Take away the powers of export bodies which have been so important in formulating stable shipping services.
- Lose all transparency in freight rate negotiations.

- Increase freight costs significantly for Australia's thousands of medium to small exporters.
- Destabilise current shipping services which are vital to the continuance and furtherance of Australia's export drive.
- Hinder the development of forward marketing strategies by industry.

Promote domination by major lines or strategic alliances in Australia's export trades.

APSA does not believe the authorisation process would provide an environment as predictable or as efficient as the Part X process.

APSA believes that carriers may opt out of any authorisation procedure, and will be tempted to operate their Australian services without regard for Australian law, by for example, using the US Federal Maritime Commission Tariff registration process as a means of circumventing any allegations of contraventions of Part IV.

Proposes and supports the introduction of amending legislation to strengthen some parts of Part X;

Further, APSA submits that these sections should be further strengthened as follows:

- application of Part VI (Enforcement and Remedies) so that aggrieved exporters can:
- refer complaints to the ACCC for investigation, prosecution and penalty
- cancellation of a registered agreement is insufficient deterrent
- pursue recovery action in the Federal Court of Australia, or State Supreme Courts in their Admiralty Jurisdiction

RECOMMENDATIONS

APSA believes that all sections in Part X of the TPA which improve the negotiating position of Australian exporters should be retained.

However APSA believes that in the light of 'experience' since the last review in 1993 there should be some additional provisions to give greater safeguards to exporters. These are:

1. Exporters to be able to deal directly with individual members of a conference or consortia with the final agreement being recognised and accepted by the conference or consortia - similar to arrangements contained in the U.S Ocean Shipping Reform Act 1998 which came into force on 1 May 1999.
2. All arrangements by carriers irrespective of their description be subject to Part IV of the TPA without exception in relation to both inwards and outwards trades, subject to exemptions provided under Part X.
3. APSA to have access to round voyage costs rather than only costs related to the outwards voyage. This would avoid the incidence of possible inclusion of some inwards voyage costs being applied to outwards voyage costs thereby 'boosting' cost figures currently provided to APSA for the benefit of negotiations.

APSA believes that some costs attributed to exports are already recovered by carriers from importers.

4. As a safeguard to the abuse of their powers legislation be introduced to provide for penalties on shipowners commensurate with the commercial benefits they derive from exemptions from Part IV of the Act.
 - APSA believes that the threat of cancellation of the carrier agreements without the power to impose penalties, or award compensation to Australian exporters constitutes no real deterrent for carriers.
 - For example in 1992 as a result of the TPC recommendation that the AUSDA agreement be cancelled, APSA believes that the carriers involved planned to circumvent any cancellation by the formation of a new agreement.
5. A broader source of funding of APSA beyond its actual members is required to meet the costs of:
 - protecting the interests of all Australian exporters;
 - research of shipper issues;
 - conduct of negotiations;
 - education of shippers.

APSA is a non-profit organisation representing public rather than private interests, and funding must be increased if APSA is to extend its role as the representative of exporters in general .

BACKGROUND THE AUSTRALIAN PEAK SHIPPERS ASSOCIATION

The Association was formed in November 1990 having been granted status as the designated peak shipper body by the Federal Minister of Shipping pursuant to section 10.03 of the TPA.

APSA represents the interests of all major Australian commodity exporters and export shippers generally in relation to outwards liner cargo shipping services.

APSA was formed at the request of major export commodity organisation after previous peak bodies had ceased operations.

A short history of previous exporter bodies follows:

- The Australian Exporters Shipping Association (AESA) March 1989 to April 1990

AESA ceased operations due to insufficient funds from members to enable the secretariat to function in the absence of government funding.

- Australian Shippers Council (ASC) August 1972 to March 1989

ASC was partially funded by the Federal Government on the basis of \$2 for every \$1 contributed by the ASC Membership.

ASC was Australia's first designated shipper body and led the way to the formation of a number of national shipper bodies in Asia.

ASC was heavily involved in previous reviews of Part X in 1977, 1980 and 1987 and the increased protection that exporters enjoy today in the current legislation is a tribute to the ASC and its work.

In 1988 the Federal Government announced it would be withdrawing support and no alternative funding arrangements could be put in place.

OBJECTIVES AND FUNCTIONS OF APSA

The objectives of APSA are to ensure that exporters have the opportunity, whenever necessary, to negotiate with shipping conferences, consortia, discussion groups and individual shipping lines as set out in sections 10.29(1), 10.41(1) and 10.52(1) of the TPA.

The APSA Memorandum of Understanding setting out its functions is at Appendix 1.

RELEVANT PROVISIONS OF THE TPA

The following provisions of the TPA are fundamentally important to the preservation of the interests of Australian shippers:

PART V - CONSUMER PROTECTION

DIVISION 2 - CONDITIONS AND WARRANTIES IN CONSUMER TRANSACTIONS

SECTION 74 WARRANTIES IN RELATION TO THE SUPPLY OF SERVICES

74(1) [Implied warranty: care and skill]

In every contract for the supply by a corporation in the course of a business of services to a consumer there is an implied warranty that the services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.

74(2) [Implied warranty: fitness for purpose]

Where a corporation supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the corporation's skill or judgement.

74(3) ["Services"]

A reference in this section to services does not include a reference to services that are, or are to be provided, granted or conferred under -

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.

PART X - INTERNATIONAL LINER CARGO SHIPPING

DIVISION 6 - REGISTRATION OF CONFERENCE AGREEMENTS

10.29 PARTIES TO CONFERENCE AGREEMENT TO NEGOTIATE MINIMUM LEVEL OF SHIPPING SERVICES AFTER PROVISIONAL REGISTRATION OF AGREEMENT

(1) The parties to a provisionally registered conference agreement shall:

- (a) take part in negotiations with the designated peak shipper bodies or, if there is not at that time a designated peak shipper body, the designated secondary shipper bodies nominated by the Registrar for the purposes of the agreement for the purposes of this section, in relation to the minimum level of outwards

liner cargo shipping services to be provided under the agreement (including any provisions of the agreement that affect the level of those services) and consider the matters raised, and representations made, by the shipper bodies;

(b) if a shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties - make the information available to the shipper body; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.

- (2) Subsection (1) does not apply in relation to a conference agreement if the shipper bodies notify, as prescribed, the Registrar and the parties to the agreement that they do not wish to have negotiations in relation to the agreement.

DIVISION 7 - OBLIGATIONS OF OCEAN CARRIERS IN RELATION TO REGISTERED CONFERENCE AGREEMENTS

10.41 PARTIES TO REGISTERED CONFERENCE AGREEMENT TO NEGOTIATE WITH CERTAIN DESIGNATED SHIPPER BODIES ETC

- (1) The parties to a registered conference agreement shall:
- (a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements (including any provisions of the agreement that affect those arrangements) whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;
 - (b) if the shipper body requests the parties to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the parties - make the information available to the shipper body; and
 - (c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer.
- (2) The parties to the agreement shall give each relevant designated shipper body at least 30 days notice of any change in negotiable shipping arrangements unless the shipper body agrees to a lesser period of notice for the change.
- (3) In this section:
- ‘negotiable shipping arrangements’ means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping service provided, or proposed to be provided, under the conference agreement (including, for example, freight rates, frequency of sailings and ports of call).

NON-CONFERENCE OCEAN CARRIER WITH SUBSTANTIAL MARKET POWER TO NEGOTIATE WITH CERTAIN DESIGNATED SHIPPER BODIES ETC.

SECTION 10.52 NON-CONFERENCE OCEAN CARRIER WITH SUBSTANTIAL MARKET POWER TO NEGOTIATE WITH CERTAIN DESIGNATED SHIPPER BODIES ETC.

10.52(1) [Negotiations]

A registered non-conference ocean carrier with substantial market power shall:

- (a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements whenever reasonably requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;
- (b) if the shipper body requests the ocean carrier to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the ocean carrier - make the information available to the shipper body; and
- (c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the meetings, and consider suggestions made by an authorised officer.

10.52(2) [Notice of change]

The ocean carrier shall give each relevant designated shipper body at least 30 days notice of any change in negotiable shipping arrangements unless the shipper body agrees to a lesser period of notice for the change.

10.52(3) [Interpretation]

In this section:

“negotiable shipping arrangements” means the arrangements for, or the terms and conditions applicable to, outwards liner cargo shipping services provided, or proposed to be provided, by the ocean carrier on the relevant trade route (including, for example, freight rates, frequency of sailings and ports of call);

‘relevant designated shipper body’ means:

- (a) a designated peak shipper body; or
- (b) a designated secondary shipper body nominated by the Registrar (by written notice given to the ocean carrier) for the purposes of the relevant trade route;

‘relevant trade route’ means the trade route specified in relation to the ocean carrier in the register of non-conference ocean carriers with substantial market power 10.52(1).

Issues

2.3 The current and future role of Conferences:

- Q. (a) What are the key developments in the international liner cargo shipping market?
- (b) What are the implications for shipping services to Australian shippers?
- (c) What are the implications for Conferences?

- A. (a) Since the last review of Part X of the TPA in 1993 there have been several developments.

Firstly there has been a concentration of shipping involving a few of the world's major shipping lines into what is known as Alliances. These Alliances virtually control the shipping on round-the-world services and on the major East-West trades into and out of Europe, Asia and North America. Secondly, because of the Asian 'meltdown' and a resultant drop in imports into these Asian economies carriers have been pricing containers into these areas at marginal costing in order to position empty containers to refill with Asian exports to Europe and North America.

Thirdly because of the lack of revenue paying goods into Asia, Asian exporters are having to pay premium rates on exports to compensate for this lack of revenue.

- (b) The implications for Australian shippers are that the drop in imports into Asia has caused a surplus of shipping space which has led to ocean rates being set at the lowest level since the introduction of containerisation in 1970.
- (c) The implications for Conferences/Carriers are that in the absence of an increase in revenue from higher rates then we may see a reduction in the number of services/lines either through mergers, such as the P & O and Nedlloyd merger, or lines just abandoning the trades.

This is the scene that is developing in other parts of the world.

- Q. What would happen to the level of service provided to Australian Shippers if Conferences were not allowed to operate?

- A. This would be a unique situation in that Conferences under anti-trust legislation are operating in all other continents.

It is APSA's view that if Part X was repealed carriers may opt out of any authorisation procedure and operate their Australian services without regard to Australian law, by for example, using U.S legislation as a means of circumventing any allegations of contraventions of Part IV.

In APSA's view the level of shipping services subsequent to any decision to disallow

Conferences would lead to a domination by major lines or alliances in Australia's export trades.

- Q. (a) What are the alternatives to Conference arrangements?
- (b) How have hub and spoke arrangements, slot chartering and swapping, container consortia and operations of non-vessel owning common carriers (NVOCC) affected the role of Conferences.
- (c) What are the implications of intermodalism for liner shipping conferences?
- A. (a) The alternatives are for a number of carriers with large fleets to run parallel services in any particular trade.
- On most occasions in the past when carriers have tried these operations they have failed.
- (b) The affect on the role of Conferences is minimal as Conferences are all involved in these operations. However NVOCCs use non-Conference carriers as well as Conferences.
- (c) Conferences were the pioneers of intermodalism and with the advent of globalisation of shipping services their involvement continues to grow/expand.

Q. To what extent does air freight and/or bulk shipping compete with liner services.

A. There is little competition to liner services as the three operations serve different needs.

Air freight exports amount to approximately 1% of Australia's total exports and are limited to very high value time-sensitive products or highly perishable goods.

Bulk shipping exports come under the category of high volume low value materials and as such are not suited to liner shipping.

2.4 What is the rationale for Part X

- Q. (a) What do the participants consider is the rationale for Part X?
- (b) Is the rationale still relevant in the light of developments in international shipping?
- A. (a) Australia is a nation of shippers and the interests of Australian shippers must be balanced against the potential power and interests of foreign carriers.
- (b) In APSA's view the rationale is even more relevant when one is seeing a concentration of shipping in the hands of fewer and fewer lines. Currently while ocean rates are so low one may question the relevance but Part X allows shippers to demand that Conferences meet and negotiate on other matters such as:

- Surcharges
- Minimum levels of service
- Bill of lading clauses
- Destination zone/inland haulage charges

APSA was instrumental in having important amendments made to the Australian Carriage of Goods by Sea Act (1991) in 1997.

These matters are as important as the level of ocean rates in ensuring access to export markets for all Australian exporters.

2.5 Effectiveness of Part X

- Q. (a) Is the liner shipping industry providing the level of service required by Australian shippers?
 (b) If there are deficiencies, what are they?
 (c) Is the liner shipping industry sufficiently responsive to changes in demand?

- A. (a) In APSA's view - yes. In fact the current level of service is in excess of demand and this has caused the fall in ocean rates in all trades.

- (b) APSA is not aware of any deficiencies.

- (c) In fact APSA believes that the shipping industry is responsive to changes in demand.

However it should be understood that in the event of a sudden increase in exports and the requirement for an additional vessel or vessels it is not always possible for carriers to obtain access to the ideal vessel to suit the trade.

- Q. (a) Do Conference and Non-Conference operators provide similar service levels?
 (b) What are the key differences?
 (c) For example do Conferences provide more refrigerated capacity.

- A. (a) In some trades the service is similar.
 (b) However Conferences generally show a greater dedication to a trade and remain through 'thick and thin' times. In the last 25 years some 40 shipping lines have entered Australia's export trades but have not survived. Only seven of these lines were members of Conferences. All Conferences have survived. Appendix 2.

- (c) Conferences do provide more refrigerated capacity than non-Conference members. None more so than in the European trade to cover Australia's large dairy, meat and horticultural exports.

- Q. Are sufficient vessels of adequate capacity employed in key trades.

- A. In APSA's view - yes.

- Q. Are service frequencies, ports of call (or land bridging or centralisation

arrangements) and destinations adequate for all exporter needs?

A. In APSA's view - yes.

One of APSA's more important roles is to negotiate minimum levels of service for each Conference, Consortia, Alliance or line with significant market power prior to Service Agreements being registered with the Registrar of Liner Shipping in Canberra. APSA has achieved excellent results from minimum level of service negotiations since 1990, some of these conducted under Part X conditions.

Many exporters and the public generally are not readily aware of the importance of these negotiations.

The negotiations have resulted in service frequencies and the provision of adequate shipping capacity to all destinations which have never been questioned by exporters as far as APSA is aware.

APSA believes that these service frequencies have contributed as much, if not more, to Australia's increase in exports in recent years than freight rate levels.

In negotiating these minimum levels of service shipping conferences, consortia and major shipping lines undertake to provide the levels of service required by exporters also covering a minimum space to be provided and a required range of load and discharge ports.

APSA monitors the services provided and it has not been necessary, to date, to remind any shipping conference, consortia or line of its MLS obligations.

As it is generally acknowledged a great proportion of Australia's export commodities are price-takers on the world scene and levels of freight currently being paid do not generally impact on successful or unsuccessful sales.

Service and reliability in APSA's view, however, is of paramount importance!

Q. Are overseas liner cargo shipping services sufficiently reliable in terms of adhering to schedules, etc?

A. Yes. Fixed day arrivals and departures are virtually the norm. The reform of waterfront practices firstly in 1992 and more recently in 1998 have contributed to these more reliable schedules. In addition the older first generation of cellular container vessels have been phased out in many instances and are, or have been replaced by faster vessels which have reserves of speed to make up for delays.

Q. (a) How do freight rates paid by Australian shippers compare with rates paid by overseas competitors?

(b) Can the difference be explained by different service and/or cost levels.

A. (a) Taking into consideration the scale of Australia's liner shipping task and the absence of economies of scale in the size of vessels in Australia's export trades, it is APSA's view that rates are generally competitive. However this does not necessarily mean the rates are the same as those paid by some of our competitors.

Shippers are disadvantaged somewhat by Australia's geographical position.

- (b) Currently because of the reduction of imports into Asia from Europe and the USA ocean rates into Asia for containers are unusually low.

However when the Asian economies eventually recover this situation will be reversed.

The size of vessels in Australia's export trades are in many cases one third the size of vessels from Europe and North America into Asia and there are therefore few economies of scale in shipping to benefit exporters.

- Q. (a) How do Conference rates compare with rates available from independent shipping operators for similar services?
 (b) Are rates of independent operators internationally competitive?
 (c) Do independent operators exercise market power?

- A (a) In the current shipping climate the rates are the same or very similar bearing in mind that there is a significant surplus of capacity with both Conference and independent operators.

- (b) Again in the current international shipping climate the rates are the same or similar.

- (c) There are no independent operators in Australia's trades who exercise market power.

- Q (a) Do Conference members earn excess (monopoly) profits on any trades?
 (b) If so what is the source of their market power?
 (c) Is there a correlation between exploitation of market power (and higher shipping rates) and Conference market share, thinness of trade or other specific market characteristics?

- A (a) No. In 1998, for example, P & O Shipping earned a 1% return on its investment in shipping. Other major carriers are reporting similar results.

- (b) Currently there is a surplus of shipping because of the downturn in the Asian economies and carriers are able to exert little market power.

- (c) In good times with everything being equal this may be so.

- Q Have Australian shippers benefited adequately from productivity improvements and cost reductions in international liner shipping?

- A APSA believes shippers have benefited.

- Q What factors are taken into account in setting freight rates?

- A Supply and demand of shipping space and the value of the products. Historically

freight rates have been set against what the product can bear.

Q To what extent has Part X improved the quality and competitiveness of international liner cargo shipping services for Australian shippers?

A APSA submits that without the rights of exporters and the obligations placed on carriers under sections 10.29, 10.41 and 10.52, exporters would not have achieved the successes they have achieved, and that carriers would have been able to service their own interests without regard for exporters.

APSA believes that its successes for shippers under Part X have been and will continue to be achieved for the following reasons:

1. Excellent results have been achieved in minimum levels of service negotiations;
2. Freight rate increases have been minimised (i.e GRIs have been abandoned);
3. Surcharge negotiations have been satisfactorily concluded;
4. Complaints to the Minister of Shipping have been satisfactorily resolved;
5. Australian flag shipping has been operating unhindered in international trades.

APSA has achieved excellent results from minimum level of service negotiations since 1990 and many exporters and the public generally are not readily aware of the importance of these negotiations.

Q To what extent is the negotiating position of Australian exporters improved by Part X?

How useful to shippers is the information required by shipping lines under Part X in rate negotiations?

A. With the protection provided by Part X the negotiating position of exporters has been enhanced. Shipping lines have been compelled to provide information at negotiations to justify their demands. On many occasions lines have not been prepared to supply the information or else have not got the information and their demands have been rejected.

Q How does Part X promote predicability of outcomes with respect to standards of shipping services.

A. When minimum levels of service agreements have been finalised with APSA the liners or Conferences have an obligation to perform. Except in the cases of loss of vessel or lockout of ports by strikes minimum levels of service agreements promote predicability. With waterfront reform leading to even greater reliability by terminals there is now even less opportunities for delays.

Q. Does Part X provide sufficient protection for Australian exporters against any uncompetitive practices/pricing of liner Conferences and independents. Are dispute settlement procedures adequate?

A. There have been only two instances when uncompetitive practices were considered serious enough for the Minister to take action. In each case the Conferences were threatened with de-registration and the matters were ultimately resolved. Regarding settlement procedures APSA submits that sections could be further strengthened as follows:

- application of Part VI (Enforcement and Remedies) so that aggrieved exporters can:
- refer complaints to the ACCC for investigation, prosecution and penalty
- pursue recovery action in the Federal Court of Australia, or State Supreme Courts in their Admiralty Jurisdiction.

However as explained earlier the two cases in dispute were settled under existing Part X legislation.

Q. As a regulatory instrument, how cost-effective is Part X. What are its major advantages and disadvantages.

A. Part X is cost-effective unlike Part VII which is an expensive route to obtain the same results. The main advantages are that Part X promotes commercial resolutions to negotiations cost effectively.

APSA has not experienced any disadvantages.

2.6 To what extent does Part X restrict competition.

It is APSA's view that Part X does not restrict competition.

APSA believes that carriers operate in a highly contestable environment, and that the continuing viability of more than one carrier group is highly desirable. Appendix 2.

Freight Rates

Under Part X Conferences can fix or regulate freight rates only to the extent that the market will allow. No longer do Conferences dominate the market and the extent to which shipping Conferences have effective control over the setting of rates and conditions has been significantly diminished. Appendix 3.

Pooling Arrangements

Not all conferences operate pooling arrangements and essentially pooling only operates in conferences where there are a multiplicity of lines offering a comprehensive range of ports to be serviced and high and low value cargoes.

APSA believes that pooling exists in order that the burden of centralisation, provision of feeder services, the cost of carriage of reefer, for example and the servicing of high cost ports can be shared between participants.

In APSA's view in those conferences which operate pooling arrangements - these arrangements should remain in order that the comprehensive service that they offer can be retained.

Overall, APSA believes that the benefit of pooling arrangements have been reflected by a containment of freight rates which would otherwise be higher if all vessels had to provide reefer facilities to all ports on every voyage.

Australian exporters require a comprehensive service, and pooling appears to satisfy that demand.

The North American Conference as an example made up of P & O, ANZDL and Columbus all servicing the same ports and similar cargoes does not have pooling arrangements. However, the Australia to Europe Shipping Conference is a good example of the necessity for pooling arrangements.

There is a popular misconception that conferences adopt pooling arrangements to hide inefficiencies. This is not correct.

Rather than abusing the system, revenue pooling guarantees that Member Lines do not serve favoured ports and cargoes alone. The revenue system effectively ensures that all ports and all cargoes receive the appropriate attention of Members.

Revenue pooling provides an important stabilising mechanism and supports a highly developed consortium with full rationalisation of sailing schedules, etc. It is important to take into account that standard costs ensures that only the more efficient Lines are not penalised - so in one sense it forces efficiency on operators.

Full revenue and cost pools are actually a flexible form of equity joint venture. Shipowners could form equity joint ventures but a pooling system is a looser, more competitive form of arrangement.

Whereas these pooling arrangements require lines to share the revenue they earn, costs can normally be deducted only on the basis of an agreed standard. A cost inefficient line therefore is in a highly exposed position in having to share its revenue but being unable to cover its cost inefficiency out of that revenue.

Essentially pooling exists in order that the burden of centralisation, provision of feeder services, the cost of carriage of reefer, for example and the servicing of high cost ports can be shared equitably.

The effect on freight rates in those conferences where pooling arrangements exist is to provide a comprehensive range of destinations at reasonable and workable rates.

Regulation of Cargoes

APSA is not aware that Conferences have tried to restrict or regulate the quality or kind of cargo to be carried by parties to an Agreement. Nor is APSA aware that the entry of new parties to an Agreement has ever been a problem.

Loyalty Agreements

Loyalty agreements, if there are any, are few and far between and are the choice of the shipper as to whether he wishes or sees benefit in these Agreements.

Q. Has the practice and conduct of the Conference changed over time?

A. Yes. No longer do Conferences dominate and therefore they have to be more market orientated.

Q. How widespread are discussion agreements between Conferences and independent operators?

A. Discussion agreements are quite common but any recommendations from discussions are not binding on the parties to these agreements.

Q. Do the exemptions in Part X promote conference arrangements to the detriment of more efficient supply coordination arrangements?

A. In APSA's view - No.

Q. In the absence of Conferences, is there likely to be more or less competition in international liner shipping?

A. In APSA's view - less competition.

2.7 Are there other ways to achieve the objectives of Part X
If there are APSA is not aware of any.

Q. Would the authorisation process be an appropriate mechanism for regulating the liner shipping industry in the absence of Part X.

A. In APSA's view - no.

The authorisation process is expensive, lengthy and the end result possibly unworkable or at best unsatisfactory, and may be of limited validity.

APSA believes that the removal of Part X exemptions for exporters from Part IV, either partially or totally from the Act would serve only to:

- Take away the powers of export bodies which have been so important in formulating stable shipping services.
- Lose all transparency in freight rate negotiations.
- Increase freight costs significantly for Australia's thousands of medium to small exporters.
- Destabilise current shipping services which are vital to the continuance and furtherance of Australia's export drive.
- Hinder the development of forward marketing strategies by industry.
- Promote domination by major lines or strategic alliances in Australia's export trades.

APSA does not believe the authorisation process would provide an environment as predictable or as efficient as the Part X process.

APSA believes that carriers may opt out of any authorisation procedure, and will be tempted to operate their Australian services without regard for Australian law, by for example, using the US Federal Maritime Commission Tariff registration process as a means of circumventing any allegations of contraventions of Part IV.

APSA believes that this is a real possibility and that any such result involving a loss of negotiating power by Australian exporters will be of real detriment to exporters, and the entire community.

APSA is also concerned that resorting to the authorisation procedure for Australian exporters will incur them in costs which many can not afford. The practical reality will be that exporters and importers will be unable to enter into co-operative arrangements to negotiate with the carriers.

In the absence of funding for exporters, the consequences are obvious, namely, the carriers may seek authorisation to present a united front to exporters, who will be unable to combine to present a united front for the purposes of negotiations, and exporters will be financially barred from the process. Carriers will then have a clear advantage on the "divide and conquer" principle in their dealings with individual exporters.

APSA regards any reduction in the rights of exporters as the most serious threat facing exporters as it will undermine the hard won gains achieved to date.

2.8 International arrangements

- Q. Would unilateral action by Australia to repeal Part X with a view to circumscribing the activities of conferences be competitive with the regulatory regimes of its major trading partners? Would inconsistency matter in practice?

- A. The regulatory regimes of Australia's major trading partners i.e. Japan, USA and Europe are not unlike Part X in that they permit Conferences to operate under anti-trust legislation but provide countervailing powers such as the Federal Maritime Commission in the U.S, the European Commission/European Union in Europe and in Japan the Fair Trade Commission/Maritime Transport Bureau/Ministry of Transport, all of who can, and do, intervene to protect shippers when Conferences 'step out of line'. APSA submits that those countries that have no protective legislation for shippers are desperate for assistance. Appendix 4.

Why would Australia want to be inconsistent?

APSA believes that the removal of Part X exemptions for exporters from Part IV, would serve only to:

- Take away the powers of export bodies which have been so important in formulating stable shipping services.
- Lose all transparency in freight rate negotiations.
- Increase freight costs significantly for Australia's thousands of medium to small exporters.
- Destabilise current shipping services which are vital to the continuance and furtherance of Australia's export drive.
- Hinder the development of forward marketing strategies by industry.
- Promote domination by major lines or strategic alliances in Australia's export trades.

An example is at Appendix 5 which sets out the pattern of freight rate increases by a dominant shipping groups in the Asian Service to North America and Europe. Appendix 6 sets out other examples of arbitrary freight increases.

The disadvantage suffered by Asian Shippers Councils and also Australian importers is that they have no countervailing powers to control this dominance without the rights given to exporters under sections 10.29, 10.41 and 10.52 of the TPA. Appendix 4.

2.9 Possible modifications to Part X:

- Q. (a) Are the exemptions outlined in Part X too narrow or too broad?
 (b) Should loyalty agreements be permitted?
 (c) Should discussion agreements be permitted?
 (d) Should conferences be closed or open?
- A. (a) The exemptions are satisfactory. However greater penalties are needed for example: some sections should be further strengthened as follows:

- application of Part VI (Enforcement and Remedies) so that aggrieved exporters can:
- refer complaints to the ACCC for investigation, prosecution and penalty
- cancellation of a registered agreement is insufficient deterrent
- pursue recovery action in the Federal Court of Australia, or State Supreme Courts in their Admiralty Jurisdiction

(b) If exporters believe that there are benefits in loyalty agreements so be it.

(c) In APSA's view accords and discussion agreements operate to lessen competition. For conference and non-conference lines to compare freight rates is immoral. Lines are either conference or non-conference. Accords and discussion agreements seek to ensure that conference and non-conference operators are not disadvantaged in trades where they compete for the same cargoes. Where competition is reduced it is APSA's view that freight rates are less economic - refer to the Trade Practices Commission Report March 1993 "Ministerial referral of complaint for investigation by the Trade Practices Commission".

(d) In APSA's view Conferences should be open.

Q. Are the objectives of Part X appropriate and consistent?

A. APSA believes they are.

Q. (a) Are dispute settlement procedures adequate?

(b) Should the Minister for Transport retain ultimate responsibility for dispute settlement?

A. (a) APSA submits that some sections should be further strengthened as follows:

- application of Part VI (Enforcement and Remedies) so that aggrieved exporters can:
- refer complaints to the TPC for investigation, prosecution and penalty
- cancellation of a registered agreement is insufficient deterrent
- pursue recovery action in the Federal Court of Australia, or State Supreme Courts in their Admiralty Jurisdiction

(b) APSA believes that in the few cases in the past when APSA had need to make a complaint to the Minister, the Minister was responsible for resolving the complaints and unless some alternate equally satisfactory arrangement can be suggested then the

status quo should remain.

Q. Should Part X exemptions be extended to intermodal rate-making by Conferences.

A. Conferences can, and do, offer door to door rates which includes intermodal transport. However APSA believes exemptions should not be extended to intermodal rate making.

Q. Could the bargaining position of shippers be improved further by, for example, imposing additional disclosure requirements on shipping conferences.

A. APSA believes that Conferences, Consortia, Alliances and independent operators with significant market power should be obliged to provide round voyage costs rather than only costs related to the outwards voyage. This would avoid the incidence of possible inclusion of some inwards voyage costs being applied to outwards voyage costs thereby 'boosting' cost figures currently provided to APSA for the benefit of negotiations.

APSA believes that some costs attributed to exports are already recovered by carriers from importers.

Q. Should inward liner shipping services be treated in the same way as outward services?

A. There are problems in treating inward liner shipping services the same way as outward services in that there is the great possibility of a conflict between two competing maritime regimes, say the U.S and Australia. What happens when the regime in one country does not recognise the regime of its trading partner? Who gets caught in the jurisdictional crossfire?

However APSA does recognise that Australian importers should have some legislative protection. APSA believes that there should be a peak body for importers similar to APSA and its powers could cover:

- Obligations of conferences and consortia to enter into discussions
- Land side costs (e.g. Terminal Handling Charges)
- Other issues as deemed appropriate
(e.g. registration of independent carriers with major market share)

Providing these powers to Australian importers will ensure a balance is achieved between the exemptions extended to outward conferences under Part X and the ability of Australian importers to have access to a framework in which consultation between all parties is achievable. Appendix 7.

2.10 Other Issues

A. FREIGHT FORWARDERS

Shippers suffer losses when freight forwarders become insolvent, and the carriers refuse to carry or deliver cargo unless the shipper pays the freight again. There have been significant failures resulting in financial loss to Australian shippers in recent years.

In addition, freight forwarders now issue their own or “house” bills of lading which are confusing to Australian Shippers:

- They represent that the freight forwarder is a principal and is the actual carrier when it is not;
- They do not identify the actual ocean carrier;
- They claim to be a principal when selling their services to shippers but when a problem arises they claim they are only the Agent of the shipping line.

Solution:

APSA believes that the solution is to include legislation dealing with the obligations of freight forwarders similar to US laws introduced in 1991, and including:

- freight forwarders deemed to be the agents of the carriers, and not the shippers;
- freight forwarders be required to register (as currently required of carriers) but to also lodge a substantial security bond of A\$250,000.00.

B. FUNDING

APSA requires additional funding if it is to successfully continue to represent the interests of Australian exporters, or importers if they obtain the same rights as exporters.

Shippers are at a severe financial disadvantage in the allocation of resources in dealing with carriers who have extensive budgets available to further their objectives.

In each of 1997 and 1998 APSA’s total budget has been no more than \$60 000 of which none was available for research and in 1998 none was available for professional assistance.

The results that have been achieved have been brought about largely by the unpaid support of volunteers, which is a most unsatisfactory manner of running a body charged with such important tasks, and which has been able to achieve significant results on a shoestring.

Options

There are a number of options for consideration:

1. Funding similar to that provided to SMA's.
2. Funding similar to the export market development grant, or
3. Commonwealth appropriation grant to assist in development of APSA's objectives.

2.11 CONCLUSION

For more than two decades Australian exporters have had the important protection of a national industry association under the designation of a peak shipper body under Part X of the TPA, charged with the role of restraining the concentrated power of shipping conferences.

Events have proved that even in competitive shipping markets, overseas shipper bodies, who do not have this backing in law, have been unable to resist the imposition of general rate increases and unfavourable conditions of carriage by conferences. In short, experience has shown that the competitive supply of shipping alone is an insufficient safeguard against abuse by conferences of their privileged place outside the constraints of anti-trust legislation.

It is APSA's view that to withdraw the exemptions currently enjoyed by conferences and shipper bodies would not work to the advantage of Australia's export industry but rather the reverse would be the case.

APSA believes that there are important sections in Part X which are fundamental to the protection of the interests of Australian exporters vis a vis the interests of foreign carriers which can only be balanced by statutory intervention backed up by penalties and Court awarded compensation.

AUSTRALIAN PEAK SHIPPERS ASSOCIATION

1ST FLOOR, 68-72 YORK STREET
SOUTH MELBOURNE 3205

P.O. BOX 244
SOUTH MELBOURNE 3205

Phone: (03) 9690 9080
Fax: (03) 9690 9087

MEMORANDUM OF UNDERSTANDING

It is hereby agreed by the members of the APSA that the Association be administered in Victoria. The Association's rules shall adequately accommodate the following principles:

1. The objectives of the Association are to fill the role of the Designated Peak Shipper Body as defined under the *Trade Practices Act* (1974).
2. In accordance with those objectives the Association's principal functions will be to co-ordinate direct representation from relevant exporters in all negotiations conducted under the auspices of the DPSB. Further, the Association will have the task of disseminating information on the outcome of these negotiations.

In addition the aims of the Association are:

- (a) to consolidate and communicate the views of its Members to liner shipping operators, other industry groups, port authorities and governments on all matters concerning the shipment of liner commodities;
 - (b) to provide a point of contact for consultation with liner shipping operators, other industry groups, port authorities and governments, and
 - (c) to ensure that the needs of and constraints on Australia's liner trades are properly considered in the formulation of government policy.
3. The Association shall be governed by an Executive Committee representing financial members of the organisation. Elections will be held each year. There will be two categories of membership, full and associate. Full members only will be entitled to voting rights. The Committee will be limited to a maximum number of seven members who will be entitled to hold office for 12 months renewable for up to five years. Any three members of the Executive Committee shall constitute a quorum for the transaction of the business of a meeting of the Committee.
4. All the Association's members who are either shippers or the organisations representing the different industry categories will be entitled to receive the Association's services and general advice. Subscribers participate in servicing the administration of the Association through their relevant nominee.
5. The Association shall co-ordinate the appointment of negotiators and representatives from interested parties on behalf of the DPSB with regards to relevant trade interest and shipping matters in general.

6. Initial funding has been contributed by industry associations. It is expected in the future that the Association will be funded by Member subscriptions.
7. The income and property of the Association wheresoever derived from shall be applied solely towards the promotion of the objects of the Association as set forth in this memorandum of understanding and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to the members of the Association or to any of them.
8. If upon the winding up or dissolution of the Association there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Association, but shall be given or transferred to some other institution or institutions, having objects similar to the objects of the Association.

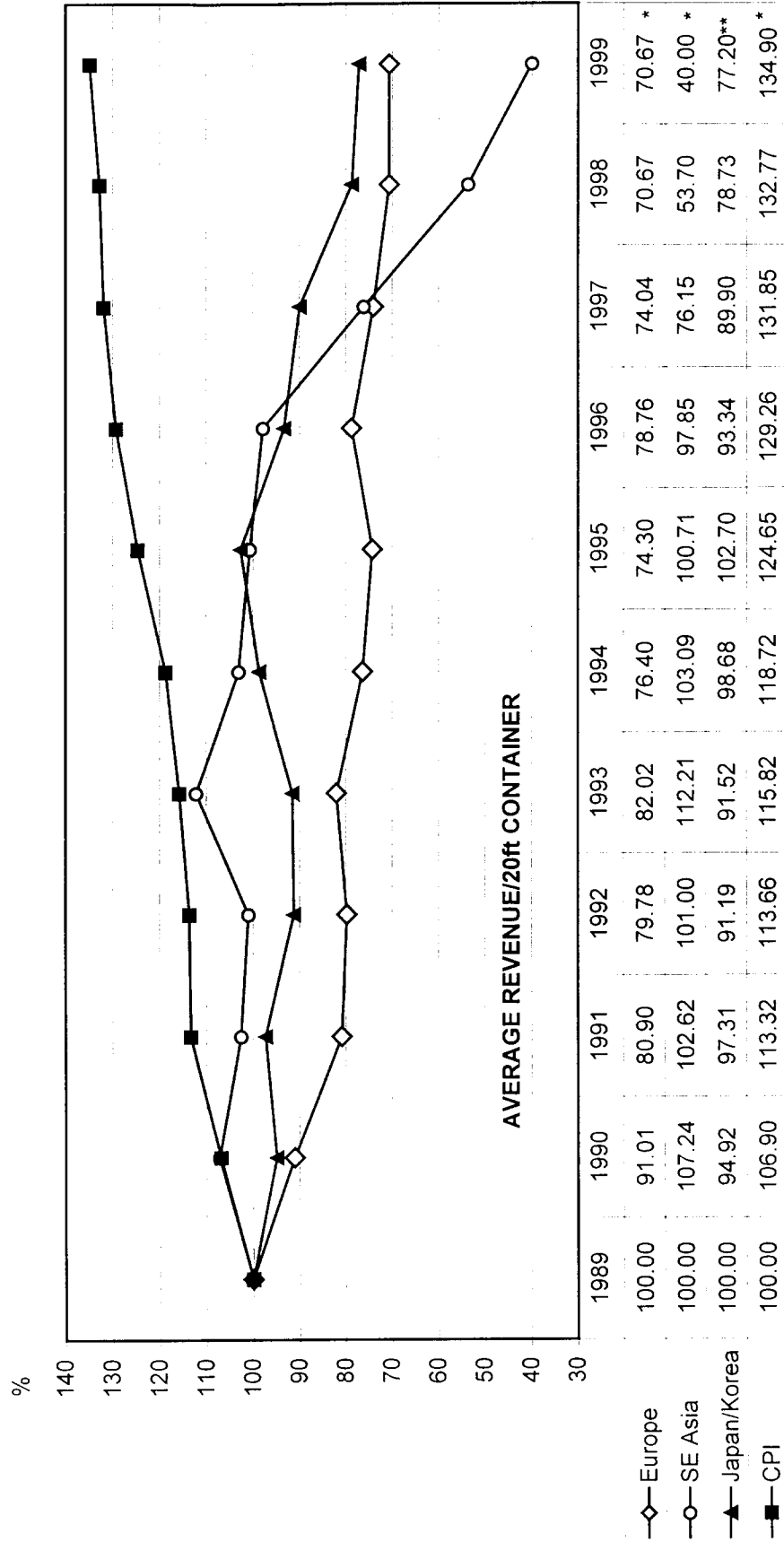
APPENDIX 2 - SHIPPING LINES WHICH HAVE ENTERED AND DEPARTED THE AUSTRALIAN LINER TRADES IN RECENT YEARS

	SHIPPING LINE	TRADE
1.	Hong Kong Island Line	Aust/Far East Aust/Japan/Korea Aust/U.S.A
2.	Pacific Australia Direct Line	Aust/U.S.A/Canada - Conference
3.	Hoegh Line	Aust/U.S.A/Canada Aust/S.E. Asia Persian Gulf
4.	Ocean Star	Aust/U.S.A
5.	AES	Aust/U.S.A
6.	Trans Continental Line	Aust/S.Africa/U.K./Europe
7.	White Star Line	Aust/S.E. Asia
8.	United Enterprises	Aust/S.E. Asia
9.	Karlander	Aust/U.S.A Aust/S.E Asia Aust/Pacific Island
10.	K (Asia) Pacific	Aust/S.E. Asia
11.	Refrigerated Express Line	Aust/S.E. Asia
12.	Polish Ocean Lines	Aust/Europe/UK.
13.	Koala Line	Aust/Europe
14.	Nusantara	Aust/S.E. Asia Aust/Europe
15.	Hyundai	Aust/U.S.A Aust/Canada
16.	Tasman Express	Aust/Japan/Korea
17.	Pacific Far East Line	Aust/U.S.A
18.	Farrell Line	Aust/U.S.A - Conference
19.	Shipping Corporation of India	Aust/S.E Asia - Conference Aust/India - Conference
20.	Antoll Line	Aust/S.E Asia
21.	Trans Pacific Line	Aust/E.Asia
22.	Mare Shakti Line	Aust/S.E Asia
23.	Sofeal	Aust/Pacific Is./Europe
24.	Sabre Line	Aust/S.E. Asia
25.	Columbus	W.Aust/U.S.A
26.	Lloyd Brasiliero	Aust/S.America
27.	Gulf Shipping	Aust/Persian Gulf
28.	Yugoslav Line	Aust/Mediterranean - Conference
29.	Jumbo Line	Aust/S.E. Asia - Conference

	SHIPPING LINE	TRADE
30.	Matson Line	Aust/U.S.A
31.	Interocean Swire (AAE)	Aust/E.Asia - Conference
32.	Austasia Line	Aust/S.E. Asia
33.	Porodisa	S.E. Asia
34.	Baltic Steamship Co.	Aust/Europe
35.	ABC Line	Aust/Europe
36.	South Pacific Shipping	Aust/New Zealand
37.	Nedlloyd	Aust/Europe
38.	Blue Star Line	Aust/Europe, Aust/U.S.A, Aust/N.Asia
39.	Tasman Express Ltd	Aust/New Zealand
40.	Union Steamship Co.	Aust/New Zealand

Comparison of Freight Rate Movements in Selected Northbound Trades

Base Year 1989



* estimate as at March 1999
 ** based on average of 1998

Source : LSS

Lloyd's List Australian Weekly

Monday October 12 1998

Asian shippers seek Part X rates model

ASIAN shippers are seeking a legal mechanism similar to Australia's Part X of the Trade Practices Act in order to stall a repetition of the spate of sudden rises in freight rates and terminal handling charges that have taken place this year.

Having just returned from a meeting in Singapore of the Federation of Asean Shippers' Councils, Australian Peak Shippers' Association president Frank Beaufort said freight rate increases had stemmed largely from a container trade imbalance.

The Asian currencies crisis had meant imports into the region have dropped sharply in recent months while exports,

By Sandy Galbraith

particularly to the US and Europe, had risen exponentially.

In order to offset container repositioning costs, shipping lines had been forced to increase rates.

To date, the impact on the southbound trade to Australia had been not particularly significant, he said, as the currency relativities had been stable with the Australian dollar pegged to the Yen.

Mr Beaufort said shippers attending the Singapore meeting had some sympathy with the container imbalance problem, but they were angry about the perfunctory manner in which they had been treated by the lines.

"In some instances, the first they know is they see a notice to shippers in the newspapers informing them of rate

increases. What they want is to at least get ship owners to talk to them and explain why these sort of increases are necessary."

He said Bangkok shippers were the worst affected.

Rate restoration to Europe will reach US\$625 per teu and US\$1,350 per feu, representing an increase of almost 100%.

The Asian shippers had stressed that terminal handling charges continued to be a major burden, with no transparency, accountability, or prior consultations on the part of the shipping cartels.

Increases in THC's have taken place even in certain markets where there have been no corresponding increases in terminal tariffs.

The Singapore meeting concluded that shipping cartels

are now adopting the practice of increasing THC as an additional source of revenue to the detriment of shippers.

The shippers reiterated their position that THC should be rolled back and consolidated into freight rates.



Asean shippers urge rate curbs

ASIAN shippers have called for lines to be forced by law to consult their customers before increasing freight rates and implementing surcharges.

Last week's annual meeting in Singapore of the Federation of Asean Shippers Councils called for a mechanism, enforceable in law, as a way of preventing what they see as the lines' arbitrary and cartel-like rate setting activities.

The shippers are angry that lines have forced up freight

rates and other fees such as terminal handling charges this year, in the face of Asia's deep economic recession.

Federation chairman Vicharn Nivatvongs said the legal mechanism would be drawn up with government support in each Asian country.

It could be modelled on Australia's Trade Practices Act, which orders lines to table plans to increase charges for discussion with shippers for a period beforehand.

Mr Nivatvongs said the

call was a last ditch effort on behalf of struggling shippers faced with freight rate increases and surcharges across Asia.

The federation said its members were angry at the lines, which they claim have failed to explain their pricing mechanism during the current crisis.

They are particularly frustrated by the widespread use of terminal handling charges,

By Edward Ion, Asia Editor, Singapore

which they say are another way of indirectly forcing up freight rates. They informed a representative from the lines' Transpacific Stabilisation Agreement about their concerns.

The representative promised to raise the matter with member lines.

The shippers reiterated their position that terminal handling charges should be

rolled back and consolidated into freight charges.

"The handling charges are a source of profit recovery for the lines," said Mr Nivatvongs. "Not only terminal handling charges, but documentation fees, for example, to issue bills of lading. These have increased very rapidly and there is no justification".

And the shippers said it was imperative that lines consult closely with them about changes in freight rates and charges even in the case of

rate restorations during the downturn.

"Carriers should not be abusing their dominant position at a time when shippers are already suffering as a result of the downturn," Mr Nivatvongs added.

The federation is the largest gathering of shippers in Asia and includes shippers' councils from Singapore, Malaysia, Philippines, Thailand and Indonesia as well as shippers from several other Asian countries.

APPENDIX 4(a)

SINGAPORE SHIPPING TIMES

23/2/99

l.com.sg/

Asean shippers urge govts to act on rate hikes

Shippers' councils also stress need for cooperation on global level

By Marcus Hand

(SINGAPORE) Asean shippers have called for government intervention and cooperation among shippers at a global level to combat hefty freight rate increases planned by shipping lines this year, following an emergency meeting in Bangkok recently.

The Federation of Asean Shippers' Councils (FASC) called an emergency meeting on Feb 1 following a report in *Shipping Times* last month that the member lines of Far Eastern Freight Conference (FEFC) planned to raise rates by US\$900 (S\$1,344) per TEU (20-ft equivalent units), in four phases, on shipments between Asia-Europe this year.

"The meeting resolved that government intervention through the means of a legal mechanism is vital and necessary," FASC said in a statement. The federation said it also planned to bring the issue up at an Asean level.

FASC also emphasised the



Mr Lu council also concerned that shippers are subsidising very low freight rates from Europe to Asia

need for cooperation at not only a regional level, but globally. It said that it would look to expand FASC by inviting more members from around the world, and work with the European Shippers' Council and the National Industrial Transportation League of the US.

The meeting was attended by members of the Singapore, Thai, Malaysian, Hongkong

and Sri Lankan shippers' organisations and also representatives from the Thai Ministry of Transport and Communications, and the Ministry of Commerce.

The news of planned increases by the FEFC came in addition to a previously announced US\$900 (S\$1,512) per 40-foot box increase this year on the Asia-US trade by members of the Trans-Pacific Stabilisation Agreement (TSA).

FASC is also concerned that the rate increase, which represents a 60-70 per cent jump over a nine-month period, will have a serious impact on trade from the region. "Such hefty rates on the two main export markets of countries will have a serious impact on exports."

Singapore National Shippers' Council chairman, John Lu, told *Shipping Times* that FASC was also concerned that shippers in this region were actually subsidising very low freight rates from Europe to Asia. Sources indicate rates for some commodities have dropped as low as US\$300 per FEU eastbound from Europe.

He said that the burden of cost should be equally shared. Comparing it to a fer-

ry service, he said that passengers would pay, for example, \$1 to go either way from Kowloon to Hongkong Island, regardless of traffic volumes in each direction.

"There is no such thing as 10 cents one-way and \$2 the other way," he said.

On a local level, SNSC is hoping to be able to provide a "bridge" for block space booking with shipping lines for small to medium-sized shippers based in Singapore, something it sees as especially important with the upcoming deregulation in the US on May 1.

"We are very concerned that deregulation will lead to a very extreme situation for small to medium enterprises (SMEs)," he said. Such companies lack the cargo volume to be able to bargain effectively with the shipping lines.

"We hope the Shippers' Council can help SME members get a realistic freight rate, and minimise the impact of the increases," Mr Lu explained.

SNSC will also be taking part in a survey of shippers by the member councils of FASC to learn more about how the rate increase affects individual shippers.

Singapore shippers slam plans for rate rise on Asia-Europe route

SINGAPORE: Singapore shippers have slammed plans by shipping lines on the Asia-Europe trade route to raise rates by \$US800 (\$A1280) per TEU this year.

"The rate of the increase is shocking. What kind of business in this world can have their prices increased by 60 or 70 per cent in a matter of months?" John Lu, chairman of the Singapore National Shippers Council, told the Shipping Times.

He was responding to reports that the member shipping lines of the Asian Westbound Rate Agreement (AWRA) were planning four rate increases totalling \$US800 this year.

The liner conference has already implemented a \$US200 per TEU rise on 1 January and plans further increases of \$US150 per TEU on 1 April,

\$US300 per TEU on 1 July and \$US150 on 1 October.

Mr Lu said the increases would affect companies exporting low value goods where shipping formed a higher percentage of total costs. Also, shipping lines would damage their own business as there would be less trade.

The economic slowdown has led to more empty containers returning from Europe to Asia but an informal survey by the shipping council showed that the cost of repositioning was about \$US300 per box, less than half the proposed increase.

The ASEAN Shippers Council had also repeatedly called on shipping lines to justify the rates and had suggested some form of regulation with the proposed rate hikes to be filed with authorities first.

Bernama

DAILY COMMERCIAL NEWS

29.1.99

SEABORNE Commerce Asia

TSA to reconfirm rate restoration plan

Presidents of member carriers of the Trans-Pacific Stabilization Agreement (TSA) will meet in New York on Jan. 28 to reconfirm their plan to seek a rate restoration as from May 1.

At the meeting, TSA member carriers will also exchange views on shippers' reactions to the restoration plan and mar-

ket conditions.

TSA at its previous presidential meeting in autumn last year agreed to restore the rates by \$900 per 40-foot container for cargoes bound for the U.S. West Coast and \$1,000 for those bound for the East Coast and inland areas.

TSA is also expected to review a rate restoration car-

ried out on Jan. 1 for east-bound cargoes from the Indian subcontinent.

Meanwhile, Westbound Trans-Pacific Stabilization Agreement (WTSA) members will also meet in New York to analyze the present state of westbound trans-Pacific trades and study steps to restore the rates on an item-by-item basis.

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FEFC to raise rates in Japanese market

The Far Eastern Freight Conference (FEFC) drafted a rate restoration plan for next spring at a principals' meeting held in London on Nov. 3.

The Japan-Europe Freight Conference (JEFC) finally confirmed its decision to restore rates on Jan. 1 next year in the Japanese market it controls. Earlier, the Asia Westbound Rate Agreement (AWRA) decided to raise rates on the Asian market in January and April next year.

The margin of increase in the JEFC rate is \$400 per 40-foot container (\$200 per 20-footer), the same as that of the AWRA rate. JEFC, however, decided to forego rate restoration on the

Japanese market for next April and decided to formulate a detailed plan for restoring rates during the second half of 1999 as early as possible.

AWRA at its owners' meeting in August fixed its restoration plan for next spring. It calls for a phased-in increase in January and April - \$400 per 40-footer in January then \$300 in April.

Favored by brisk cargo flow from Asia and tightened space, AWRA has restored its rates three times this year - January, July and October. The rates of increase in Indonesia and Thailand were \$900 to \$1,000 per 40-footer.

Meanwhile, JEFC has also raised its rates three times this

year - January, April and October. However, the margin of increase on rates in October was much smaller in the Japanese market than in the Asian market, as the JEFC concentrated on full implementation of a terminal handling charge (THC), according to carrier sources.

As a result, rates on some cargo items became higher in the Asian market than in Japan, causing profit-conscious carriers to review their space allocations to the Japanese market.

Considering this situation, JEFC made a basic decision at its executives meeting in late October to carry out the rate restoration next January.

1998 / 1999 Rate Restoration for Asia-Europe
Westbound Trade

	1998					1999 (planned)		(unit: dollar)
	Jan. 1	Apr. 1	July 1	Oct. 1	Jan. 1	Apr. 1		
Japan (20/40-footer)	75/150	75/150	-	150/300	200/400	-		
Asia (20/40-footer)	100/200	-	150/300 (minimum)	150/300	200/400	150/300		

(unit: dollar)

APPENDIX 5(a)

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Rates on Guangzhou/Huangpu-Asia trades to be hiked Dec. 1

Shipping lines serving the lanes between Guangzhou/Huangpu and other points in Asia have decided to raise their rates by \$50 per 20-foot container and \$100 per 40-footer, effective from Dec. 1.

The 22 carriers joining in the move are American President Lines (APL), Cosco, Cho Yang

Shipping, Hanjin Shipping, Hyundai Merchant Marine, Nippon Yusen Kaisha (NYK), Mitsui OSK Lines (MOL), Kawasaki Kisen Kaisha (K Line), Maersk Line, Orient Overseas Container Line (OOCL), P&O Nedlloyd, Regional Container Line (RCL), Sea-Land Service, Uniglor

Marine Corp., Wan Hai Lines, Yangming Marine Transport, Zim Israel Navigation, Heung-A Shipping, Kien Hung Shipping, Chen Lie Navigation, Dongnama Shipping and Korea Marine Transport.

The timing of the rate restorations has been left to the individual carriers' discretion.

30/11/98

CTSA to restore east-bound freight rate levels

The Canada Transpacific Stabilization Agreement (CTSA) has decided to increase freight rates for eastbound cargoes from Asia effective April 1 next year, CTSA announced.

CTSA member carriers will increase rates by US\$750 per 20-foot container, \$1,000 per standard 40-foot container, \$1,125 per high-cube 40-foot container and \$1,266 per 45-foot container.

With brisk eastbound cargo movements in the backdrop, the CTSA on July 15 raised the rate by \$200 per 40-foot container. It also carried out a

general rate increase (GRI) of \$300 per 40-foot container as from Oct. 1.

The members also indicated that they will introduce a \$300 per FEU container peak season surcharge (PSS) effective from June 1 through Nov. 30 next year, applicable to all shipments moving on their vessels from Asia to Canada. The 1998 PSS is \$100 per 40-foot container effective until Nov. 30.

CTSA executive director Albert A. Pierce was quoted as saying, "All of the forecasts we have seen suggest that Asia's economic crisis will continue through 1999, that Asian manufacturers will continue to focus their export targets on North America and that the severe trade imbalance seen to date will continue."

The CTSA members said a \$200 per FEU equipment repositioning charge introduced in August this year will remain in effect next year to specifically address continuing operational difficulties associated with retrieval and positioning of empty containers back to Asia from Canadian delivery points.

30/11/98

APPENDIX 7

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IMPORTERS UNHAPPY.

FOR all the protection to exporters under Part X, Importers' Association chairman David Kennett believes that importers remain the targets of THCs imposed by conferences and independents "answerable to nobody".

Australia rejected the idea of putting importers under Part X because of the likelihood of clashes with the shipping laws of other countries.

As a result, says Mr Kennett, importers are still being hit with THCs fixed by conference and independent carriers "to some offshore set of rules which they decide by themselves".

"The market place puts pressure on the ocean carriers, who respond by saying that in the name of transparency, 'we will identify some costs which

are not blue water and which we cannot control', and pass them on.

However, THCs are becoming a huge proportion of freight rates on some trades such as North America, he said.

"It is rubbish to say that they cannot determine the cost when they negotiate the rates and choose the terminals. They are opting out, in the name of transparency".

"They say that they are offering a shipping service, but cannot control their costs. That's a cop-out", said Mr Kennett.

He also believes that currency adjustment factors are not simply passive transmitters of exchange fluctuations.

"Shipping lines manipulate them, as part of a protected group which we cannot influence", he said.

LLDCN

23/8/99