

**JSA Comments on the Draft Report
concerning the Review of Part X of the Trade Practices Act 1974**

With reference to the Draft Report concerning the Review of Part X of the Trade Practices Act 1974 published in October 2004, the Japanese Shipowners' Association (JSA) respectfully submits its comments.

- 1) Although an abolition of Part X is proposed by the Productivity Commission as its preferred option, JSA still strongly favours the retention of the current administered immunity from the competition laws for carriers' agreements (hereinafter referred to as the "immunity"). You will find the JSA's fundamental stance on the immunity in our previous submission in August 2004.

- 2) JSA supports the submission separately filed by Shipping Australia Limited (SAL) which includes three Japanese liner shipping companies who are members of the JSA. Since the SAL's comments in November 2004 enters into the details of the Draft Report and our stance on the immunity has not been changed as mentioned above, we would like to concentrate our comments in this submission on the necessity of international comity and harmonisation of laws governing a borderless industry such as oceangoing shipping. In addition, we would also like to draw the Commission's attention to the situation in Japan concerning carrier/shipper relations at the latter part of our submission. In short, the immunity given to the carriers' agreements is also recognised as important tool to promote dialogue and relationship with shippers so that shipping industry can assist shippers to operate their global operation. Since carriers in Japan highly value an importance of carriers' agreements for the benefit of carriers and shippers in attaining the sustainable international trades, conferences and agreements covering Japan, which include Japanese and foreign shipping lines, have conducted dialogue with their shippers on a long-term basis. The main purpose of such dialogue is to provide their customers a maximum information and transparency in operating agreements in order to obtain shippers' understanding on continuous operation of carriers' agreements.

- 3) As the Draft Report describes, in Japan, carriers' agreements including liner

shipping conferences, discussion agreements and consortia are exempted from the general provisions of the Anti-monopoly Law by the Maritime Transportation Law. As we mentioned in our previous submission, the current international regulatory framework for carriers' agreements has been established for long years and it has enabled effective and reliable liner shipping services around the world. We therefore do not see any need to take additional action concerning activities of carriers' agreements in trades to and from Australia. However, if Australia intends to change its regulation while other major trading partners such as Japan(*) and the US retain their current regulatory framework, **we stress that it is essential that the Productivity Commission carefully assesses the legal and economic implications of its proposed unilateral change and we also urge the Commission to undertake consultations with its international counterparts from the viewpoint of international comity to avoid possible conflicts of law before taking its final action.**

(*) For example, according to statistics from the Department of Agriculture Fisheries and Forestry of Australia, for the year 2003, Japan was ranked at top for beef export from Australia with 33% share of total tones shipped, and for year-to-date 2004 (Jan-Nov), Japan has maintained this position with 43% share.

- 4) With reference to a Japanese example of carrier/shipper relations, the importance of achieving maximum transparency in operating carriers' agreements is widely recognised in Japan in exchange for the immunity given to the carriers. In Japan, a voluntary consultation mechanism between carriers' agreements and the Japan Shippers' Council (JSC) has been well-established and we understand that JSC principally does not oppose the existence of carriers' agreements including discussion agreements, on which the Australian Peak Shippers Association has cast doubts with regard to lack of their members' commitment, as far as appropriate opportunities of dialogue are given to them. In November 2004, JSA and JSC jointly assisted a symposium organised by *the Japan Maritime Daily*, a Japanese maritime press, in which representatives from carriers and shippers based in Japan exchanged their views on current major developments on liner shipping. We attach a copy of the article of *the Shipping and Trade News* issued on 3 December 2004 for your reference. We believe such dialogue between shippers and carriers would contribute to mutual trust and better understanding among them concerning the role and necessity of carriers' agreements for the global trade. JSA will continue to make our every effort to promote sincere dialogue and good relationships between

carriers and shippers in Japan, Asia, Oceania and elsewhere in the world to obtain proper understanding on the role of carriers' agreements as we believe continuing activities of agreements under the current administered anti-trust immunity will contribute to steady and sustainable development of the world trade. **We would therefore suggest to encourage more positive dialogue between carriers' agreements, including discussion agreements, and shippers in Australia by expanding relevant clauses of the TPA Part X.** In this connection, we fully support the proposals made by SAL (para 98, p 23 of DR4) and the Department of Transport and Regional Services (p 42 - Preferred approach - of Sub9) for new relationships between carriers and shippers in Australia.
