

**Australian Competition & Consumer Commission**

**Trade Practices Act 1974  
Part X Investigation**

**Asia-Australia Discussion Agreement  
For  
Australia Southbound Liner Trades for North East Asia**

**A Strictly Confidential submission from and on behalf of the members**

***The Chamber of Commerce and Industry of Western Australia***

## **GLOSSARY OF TERMS**

<b>CCIWA</b>	Chamber of Commerce & Industry of Western Australia
<b>ACCC</b>	Australian Competition & Consumer Council
<b>AADA</b>	Asia-Australia Discussion Agreement
<b>Part X</b>	Part Ten of the Trade Practices Act 1974
<b>IAA</b>	Importers Association Australia
<b>AFIF</b>	Australian Federation of International Forwarders
<b>TEU</b>	Twenty Foot Equivalent Unit
<b>CABAF</b>	Currency and Bunker Adjustment Factor
<b>BSC-BAF</b>	Bunker Surcharge/Bunker Adjustment Factor
<b>EHO-LOLO</b>	Equipment Handover- Load Off Load On Fee
<b>THC</b>	Terminal Handling Charge
<b>PSC</b>	Port Service Charge
<b>TPA</b>	Trade Practices Act
<b>MSC</b>	Mediterranean Shipping Company
<b>CFR</b>	Cost and Freight

**The Chamber of Commerce & Industry of Western Australia (CCIWA) represents over 5,000 Western Australian organizations a substantial number of which are importers and/or exporters.**

**We now submit this paper in the interest of the importers who comprise some 1400 Western Australian companies.**

On 19<sup>th</sup> November 2003 representatives from CCIWA participated in a discussion with representatives from Treasury, Department of Transport and Regional Services and the ACCC in Melbourne where we supported a request that the next review of Part X of the Trade Practices Act 1974 should be advanced from 2005 to 2004.

At that meeting we made a number of statements in respect to the unsatisfactory developments of increased freight rates through the proliferation of surcharges that are forced on importers.

With those comments clearly in mind we make this formal submission.

Allow us to open by restating the view that we consider a review of Part X of the Trade Practices Act is required at the earliest opportunity in 2004 and not 2005 as currently planned.

The areas of our concerns include:

- 1. Part X does not give importers, adequate recognition or opportunity to protect their interest and to obtain realistic freight rates from a worldwide supply market.**

It needs to be taken into account that there is a very significant number of importers buying relatively small quantities of containerised product from a wide range of suppliers world wide and they do not share the same market power as the major importers who are able to negotiate substantially lower freight rates and charges.

Greater consideration needs to be given to the importance of the import container trade, without which the exporters of Australia would be required to pay significantly higher freight rates through the need to have empty containers positioned into Australian container ports.

To highlight the above, Fremantle Ports statistics for financial year 2001-2002 shows (See Appendix A): -

Import Containers        196,711 TEUS  
comprising 154,829 full and 41,942 empty.

Empty container figures can be largely attributed to refrigerated containers being returned for export cargo loading.

Export Containers      186,365 TEUS  
Comprising 142,498 full and 43,867 empty.  
Empty containers comprised of excess equipment not  
required to support actual exports.

The statistics also show that in the period 1996-2001 the average annual increase in trade was: -

Import 12.7%  
Export 11.6%

During the same period there has been a significant decrease in the number of empties being exported from Fremantle, which confirms an improving balance in trade and a significant benefit to ship owners.

- The above shifts in trade patterns, reinforce our earlier remarks that Part X does not give adequate consideration to importers and thereby fails to ensure as far as is practical:

*“To extend to Australian importers in each State and Territory the protection given to Australian exporters”*

## **2. The Protection afforded under Part X to Discussion Agreements**

Due to the very nature of importers buying from a world wide market in varying numbers, the present protection provided to ship owner Discussion Groups is of no benefit to importers who, because of their substantially greater numbers than exporters, are often unable to enter meaningful negotiation with Discussion Groups and are therefore forced to rely on tariff or book rates quoted by the consortium lines or the non aligned outsiders.

Ship owners operating in consortia or non aligned outsiders show a remarkable similarity when increasing rates and surcharges and it is with regret that, apart from a handful of major retailers, including “K” Mart, Coles Myer, Woolworth’s, Bunnings, David Jones and Grace Bros, importers do not have the market power to challenge the shipping lines operating under Discussion Group protection.

Major importers mentioned above are able to contract with the shipping lines for annual all in freight rates whereas most other importers are subject to the application of freight rate and surcharge increases at will and with minimal or no prior notice.

Freight increases on imports under the guise of Blue Water “Rate Restoration” is contributing to the national trade imbalance and leaves importers with no option than to pass the cost on to consumers, or where they in turn have contracted for a specific period, to absorb the cost and a potential loss.

- The protection afforded to Discussion Agreements through Part X does not provide importers lacking major buying power any protection.

### 3. **Surcharges to freight rates**

The change in freight rates from an all in figure with CABAF to a Blue Water component plus add on multiple surcharges has allowed ship owners to maximize their returns without need for consultation.

**BSC-BAF** is modified by Consortium lines and outsiders at will with extreme variation in rates and the absence of any supporting data.

**Peak Season Surcharges** are introduced at will and without consideration for the impact on importers who trade consistently throughout the year.

**Documentation Fees** are simply an increase to the Blue Water rate and should form a part of the all in rate of the contract for carriage

**EHO-LOLO** has been introduced to supposedly cover lifting off an empty container at the ship owner's storage depot after it has been unpacked by the importer and should form part of the all in rate of the carriage contract.

**THC** has been applied in varying amounts supposedly to cover the discharge terminal handling costs. These charges are not transparent and the importer has no access to verify their accuracy or fairness.

This cost is one directly negotiated between the ship owner and the terminal operator and as such should form a part of the all in freight cost.

**PSC** was introduced with the commencement of containerisation to cover the port authority wharfage charge based on a port authority declared calculation of, 28 M3 per TEU. The charge raised by ship owners is inconsistent with that formula.

- The protection afforded to Discussion Agreements through Part X does not provide importers without major buying power with any protection to challenge the need, reasonableness, variation of, or the transparency of, these surcharges.

### 4. **East Asia Trade Investigation**

It is clear that regular increases in freight and terminal charges during 2003 are significant and damaging to the national interest as well as adversely affecting individual importers lacking substantial market power. The material contained in the ACCC document highlights this issue.

- The protection afforded to Discussion Agreements through Part X does not provide the importers lacking major buying power with any protection to challenge rate increases.

## **CCIWA RESPONSE TO MATTERS RAISED IN THE ISSUES PAPER**

### **Service level**

- Of fourteen shipping lines noted as members of the Australia Discussion Agreement, regular and reliable service offered to Western Australian importers is restricted to only five:
  - a. MSC
  - b. Maersk Sealand
  - c. “K” Line
  - d. Mitsui OSK Lines Ltd
  - e. NYK Line
  
- Additionally, services are offered by
  - a. PIL
  - b. Hapag Lloyd

Experience suggests that with the exception of MSC and Maersk Sealand the other members of the Discussion Agreement are reluctant to quote freight rates for extended periods.

Individual importers seeking to purchase goods FOB, experience great difficulty, which suggests that discounted rates are being quoted to the sellers at loading ports.

The policy of lines providing a service to WA shows that significant charges are levied against imports by way of a load port THC and Bill of Lading Fee, these charges being in addition to the discharge port PSC, THC, EHO/LoLo and documentation fee.

### **Level of Service**

Without the services of shipping lines not party to the Australia Discussion Agreement, it is reasonable to suggest the level of service to WA would be inadequate.

The Lloyds List verifies all services from East and North Asia are operating through the Singapore Hub transhipping on the Singapore to Fremantle feeder services.

On occasions there have been reports of containers missing their Singapore/Fremantle connection due to congestion in Singapore or inadequate space on the feeder carrier, which suggests the connecting carriers are well supported.

Unfortunately, we do not have access to the number of occasions that containers fail to meet the nominated or first connection or the specific cause of the short shipment.

### **Stability of Freight Rates**

Stability of Freight Rates coupled with regular and reliable service are essential elements of international trade.

We see no evidence that the Discussion Agreements have contributed to stability in freight rate setting in this or any other trade. On the contrary the advertised rate increases in the Japan and Korea trades under the guise of Rate Restoration suggests the Discussion Agreements do not contribute to stability. The Rate Restoration in the Korea and Japan trades is an imposed rate and not one negotiated with importers. Rate increases in the Asia trade have similarly been imposed.

It is very clear to us that ship owners are simply following the principle of supply and demand, adjusting freight rates to suit their individual requirements.

With experience of many years, we do not believe Discussion Agreements have provided any stability in the level of service or freight rates.

Exemption from anti competition provisions of the TPA offered by Part X has not provided a stable level of reasonable freight rates in the inward trade. Importers are continuing to be forced to bear an unreasonable amount of the costs of shipping lines providing services to Australia, which we consider is a disadvantage to importers as well as consumers and is against the national interest.

Information circulated by ACCC confirms our view that Discussion Agreements have been of no benefit to the import trade and are unlikely to be of any benefit in the future.

### **Decision Making Regarding Freight Rates**

It is very clear that overseas principals set the policy for the establishment of freight rates into and out of Australia and local representative offices only have varying levels of input.

The direction by overseas principals has a definite detrimental effect on the competitiveness of inward liner shipping services as it inhibits the potential for importers to obtain competitive rates for inward cargo.

We believe the policy direction by overseas principals causes significant restriction on the ability of local line representatives to enter meaningful negotiations on the level of freight rates and surcharges.

### **Service Standards Provided by Discussion Agreements**

Service levels to Fremantle have not changed since the major operating lines withdrew direct service by changing their operation to feeder services between Singapore and Fremantle with connections with main line operations to the major trade areas.

In our opinion:

- Discussion Agreements do not contribute to stable liner services
- There is no evidence to support a view that importers would be deprived of an adequate service without the existence of Discussion Agreements.

- Due to hubbing through Singapore there is no evidence to suggest importers would be any worse off without the existence of Discussion Agreements
- There is currently adequate access to inbound shipping into Fremantle.
- The majority of all major policy decisions are established by overseas management in both the provision of service and rate levels. It can therefore be said that that in itself has affected the level and cost of inbound services.

#### **Investment in new tonnage**

- There has been no significant change in the level of service in recent years and we are not aware of any new tonnage being committed or introduced to the trade into Fremantle.

#### **Increases in demand and adequacy of liner services**

- It is reasonable to believe the growth in demand for container space will be sustained in 2002/3 comparable with 2001/2
- Based on trade trends since 1996 it is expected there will be a growth in inbound container traffic of about 12% in the coming year and that will demand an increase in space on the feeder service from Singapore to Fremantle.

#### **Investment in new capacity by shipping lines in response to rising demand**

- There is no evidence that service levels are to be increased to keep abreast of projected increase in demand
- There is similarly no knowledge of increased service levels by competitors of the AADA
- If service levels do not keep pace with demand then this is entirely attributable to the AADA. As the lines party to the Japan Korea trade are largely the same as from North East Asia, excluding MSC (who is limited to trade from Korea) they will certainly have a major impact on determining any introduction of increased capacity to service the trade.

#### **Cost of increasing capacity and availability of suitable shipping**

- The questions raised in the issue paper in regards to capacity can best be answered by ship owners servicing the trade to Fremantle. Having said that the statistical information available supporting the continued growth in the container traffic into Fremantle supports our opinion that greater capacity will be required.

It is unrealistic to consider that the container traffic will be continually balanced and once again the statistics available support the opinion that the gap between imports and exports is narrowing.

## **Negotiation Process**

- In recent years there have been no direct negotiations between providers of liner services and importers in Western Australia
- IAA and the AFIF do not act for Western Australian Importers
- The operation of the majority of services into Fremantle is controlled by principal Australian offices in Sydney or Melbourne and as such the present structure is not conducive to realistic negotiations
- Western Australian importers are by necessity forced to negotiate individually or simply accept shipments on CFR basis.
- There are no realistic negotiations as overseas management determines freight level policy.

## **Access to Import Markets**

- There is currently a satisfactory access to import supply sources from North East Asia provided by conference and non-conference lines all hubbing via Singapore.
- There is no evidence to suggest that the AADA has had any impact on the scale of shipment of inward cargo from NE Asia since 2000.

## **Competition and Trade Agreements on the NE Asia Trade Route**

- There is competition between conference and independents but to our knowledge no competition between members of the Discussion Agreement lines.
- The conduct of lines providing inbound services has been unsatisfactory and the AADA has not resulted in any improvement
- Discussion Agreements have in our opinion only provided an unhealthy comfort level to the conference lines. This is more so in the Japan/Korea trade where there is a greater reliance on CFR shipments
- There are no break bulk services operating from NE Asia to Fremantle and only one break bulk service operating from Japan/Korea to Western Australia providing space for non containerisable cargo

## **Ease of entry by shipping companies into North East Asia-Liner Trade**

- Although there are 14 lines operating under the AADA into Eastern Australia only 5 service Western Australia
- To the best of our knowledge there are no regulatory barriers inhibiting new entries to the trade.

- The protection provided by Part X limits the interest of potential lines entering the trade to Western Australia due to the market control of existing AADA lines.

### **Regulatory Jurisdiction Issues**

- We are not in a position to answer the questions raised in your issue paper but are not aware of any mandatory legislation

### **Conclusion**

It is our opinion that neither the Discussion Agreements nor the existing provisions of **Part X** provide any assistance to the Western Australian Importers or serve the National Interest.

This response is provided to the best of our knowledge and belief