

AUSTRALIAN PEAK SHIPPERS ASSOCIATION

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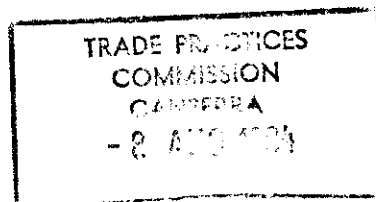
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3 August 1994

Professor Alan Fels
Chairman
Trade Practices Commission
P.O. Box 19
Belconnen ACT 2616



Dear Chairman,

CURRENCY ADJUSTMENT FACTORS AUSTRALIA-UNITED STATES CONTAINERLINE ASSOCIATION

A dispute has arisen between the Australian Peak Shippers Association (APSA) and the Australia-United States ContainerLine Association (AUSCLA) over the allocation of costs to currencies for the structure of the currency adjustment factor (CAF).

This CAF is applied to freight rates in the Australia to USA outwards trades to compensate the lines for changes in the Australian dollar and other currency relationships - currencies which form part of the line's operating costs.

Background

APSA is the Designated Peak Shippers Body specified under subsection 10.03 (1) of the Trade Practices Act and represents the interests of Australian shippers generally in relation to outwards liner cargo shipping services.

Currency adjustment factors (CAFs) were introduced in the 1970s at a time when there was a significant change in the relationship between the Australian dollar and other currencies - essentially the Australian dollar was devalued.

CAFs have been applied to outwards cargo freight rates to the U.S. ever since. However, since the 1970s the U.S. dollar - the major currency used in operating costs in the trade - has weakened and APSA has as a policy sought to remove CAFs from all trades.

attachments with PL19 8/8/94.

The reasoning behind APSA's policy is that surcharges imposed by a Conference or Consortia to cover sudden or extraordinary increases in costs or losses of revenue should be regarded as temporary and removed altogether once the situation or circumstances for which they were imposed ceases to prevail.

As a first step to the removal of CAFs in the U.S. trade APSA entered into negotiations under Part X of the Act with AUSCLA on behalf of Australian Shippers on 21 September 1993 to seek the removal of CAFs.

This initial meeting was brief with AUSCLA declaring firmly that the prevailing CAF of +16.70% was essential to the efficient operation of the Lines.

The meeting ended with APSA requesting detailed information on the structure of the CAF to support the prevailing CAF of +16.70%.

On the 25 October 1993 AUSCLA provided confidential information related to the CAF structure compiled by their London accountants KPMG Peat Marwick - copy attached.

After considering the Peat Marwick letter APSA arranged and met with AUSCLA under Part X conditions on 29 October 1993 to discuss and clarify certain aspects of the KPMG letter.

On the 24 November 1993 AUSCLA sought to respond to APSA's queries and requests in a letter - copy attached.

However, APSA could not agree that AUSCLA had addressed APSA's queries in relation to the application of CAFs to terminal handling costs and depreciation.

The APSA Complaint

APSA complains that the CAF surcharge has been exaggerated due to (1) incorporation of terminal charges and cargo handling costs - costs which are already recovered by the lines in the notorious US\$290/TEU Terminal Handling Charge - into the CAF structure. The Terminal Handling Charge of US\$290/TEU is paid in U.S. dollars and is therefore not subject to CAF, and (2) depreciation being incorporated in the CAF structure.

Depreciation is not a cost outlay and therefore is not subject to CAF.

APSA has established from other Conferences and Consortia servicing Australia's outward trades that depreciation is not used in their CAF structures.

Various copies of correspondence relating to the above dispute are attached.

Directions under Part X

Section 10.45 (a)(ii)(A) - AUSCLA has failed in its obligation to negotiate the structure of the CAF and has presented the CAF structure as a fait accompli.

Section 10.45 (a)(iv)(A) - AUSCLA has failed to apply the registered agreement without due regard to the need for outwards liner cargo shipping services to be efficient and economical.

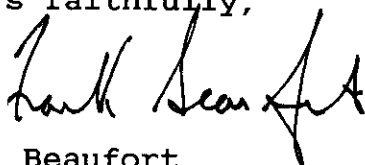
Section 10.48 (1) allows a person affected by the operation of a registered Conference agreement to apply to the Commission for an investigation into the question of whether grounds exist for the Minister to be satisfied in relation to the agreement of one or more specified matters referred to in paragraph 10.45 (a).

Section 10.48 (5)(e) - an association representing shippers who use, or may reasonably be expected to need to use, such services shall be taken to be a person.

Action

APSA considers that AUSCLA has failed in its obligations under Part X and APSA now requests that the matter giving rise to this dispute be investigated by the Commission.

Yours faithfully,



J.F. Beaufort
Executive President

Att: