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PROTECTING AUSTRALIA'S BORDERS – MICHAEL OUTRAM APM
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OPPORTUNITY FOR REFORM
BIOSECURITY & THE ENVIRONMENT TOGETHER – ANDREW METCALFE AO

"KEEPING AUSTRALIA'S INTERNATIONAL TRADE MOVING"



Australian Peak Shippers
Association Inc. (APSA)

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“KEEPING AUSTRALIA’S INTERNATIONAL TRADE MOVING”



Australian Peak Shippers Association Inc. (APSA)

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ACROSS BORDERS

AUTUMN 2020



Shipping reform – a need for contemporary solutions to safeguard shippers' interests

The Australian Peak Shippers Association (APSA), supported by a secretariat function performed by Freight & Trade Alliance (FTA), is the designated peak shipper body granted status by the Federal Minister for Infrastructure and Transport under *Part X* of the *Consumer & Competition Act 2010 (Part X)*.

Part X has served Australian trade since the 1970s providing a range of necessary safeguards protecting the interests of Australian shippers (importers and exporters).

As suggested in an Australian Competition and Consumer Commission (ACCC) discussion paper released on 3 December 2019, Part X is likely to be replaced by a contemporary block exemption regime. FTA/APSA sees merit in this approach and having the ACCC, with its track record of strong compliance enforcement, to oversee ongoing consortia liner registrations.

In an environment where the shipping line market is rapidly consolidating, our shippers face the serious risk of market manipulation. As highlighted in the report from the Chair, shippers also continue to suffer from unregulated Infrastructure Surcharges administered by stevedores without a commensurate reduction in shipping line Terminal Handling Charges.

In a formal submission, FTA/APSA made nine (9) recommendations addressing fundamental shipper protections while allowing for shipping lines to achieve economies of scale and provide lower-cost services, enhanced frequencies and a wide variety of destinations.

While shipping reforms remain at the forefront of our advocacy activity, our attention is never too far away from core border and biosecurity activities.

To that end we are privileged in this Autumn 2020 edition of *Across Borders* to have foreword contributions from both Michael Outram, Commissioner of the Australian Border Force and Andrew Metcalfe as the new Secretary (GEO) of the Department of Agriculture, Water and the Environment.

By PAUL ZALAI, Co-founder and Director,
Freight & Trade Alliance (FTA)



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Protecting Australia's Borders

By MICHAEL OUTRAM APM, Commissioner and Comptroller General of Customs – Australian Border Force

In the winter of 2018, soon after I was appointed Commissioner of the Australian Border Force (ABF), I outlined in this magazine my vision for modernising Australia's customs and border functions.

Back then we were relatively new to the Home Affairs portfolio and our complex, 10-year customs and border modernisation journey was just beginning. Almost two years on, record numbers of people and goods continue to cross our borders, matched by an increasingly complex international travel and trade environment.

With more than 44 million air travellers traversing our border in the 2018-19 financial year alone — that's almost double Australia's population — facilitating passenger movements with world class technology is more important than ever.

Likewise, with strong trade growth resulting in ABF officers processing 53 million air cargo and 2.3 million sea cargo containers in the same period, a secure and efficient trading environment is an essential part of our nation's economy and international competitiveness.

Australia's two-way trade is now worth close to \$800 billion and edging towards \$1 trillion over the coming years. More than 53,000 Australian businesses export their goods to the world, while one in five jobs in our economy involves trade-related activities.

Along with rising numbers of people and trade, we detected more than 19 tonnes of illicit drugs at the border in the 2018-19 financial year – about 14 tonnes more than in 2015-16.

The ABF must be a reliable filter – one which facilitates beneficial travel and trade flows crucial to our nation's economic prosperity, while also identifying and intercepting security

threats. In this day and age, it is impractical and financially unfeasible to manage the border by simply putting additional officers into our operational front line.

That's why, in line with the Prime Minister's intention to improve service delivery while cutting red tape and bureaucracy, we are working towards improving all aspects of our business while making our services more convenient, seamless and digital.

We cannot do this alone. Partnership is at the core of our customs and border modernisation agenda. We are actively developing and building on our partnerships with Australian Government agencies, foreign governments, industry and business, to respond to shared challenges and harness our collective capabilities for the benefit of all.

One example of inter-country cooperation is our work with the New Zealand Customs Service, to trial a digital secure trade lane. For business, the lane reduces administration and customs checks, allowing our respective government agencies to obtain trade information faster. As such we are better able to monitor higher-risk, trans-Tasman cargo.

Bolstering revenue collecting opportunities, upgrading our underlying IT platforms and infrastructure, leveraging technologies like blockchain and continuing to expand our thriving programs such as the Australian Trusted Trade program, are additional priorities.

There are now more than 600 businesses and service providers accredited as Australian Trusted Traders, with many more progressing towards accreditation. Benefits include priority treatment of goods at the borders of countries where Australia has a Mutual Recognition Arrangement (MRA). These countries now include Canada, the People's Republic of China, Hong Kong,

Japan, New Zealand, Korea, Singapore, Taiwan and India. Negotiations to establish MRAs are also being progressed with the United States of America and Thailand. We also hope to establish agreements with Malaysia and Indonesia.

Reforms for Australia's food manufacturing sector announced by the Australian Government's Deregulation Taskforce in late 2019 include a new online export documents system. By reducing barriers to investment through cutting red tape and paper shuffling, it will be easier for sole traders and micro businesses to take their growth to the next level.

Our work on supply chain integrity has identified vulnerabilities that we are working on to shore up in partnership with intelligence and law enforcement agencies. Among other integrity and enforcement measures, the ABF is considering how Artificial Intelligence techniques could support improved identification of illicit goods and individuals of concern.

Border Watch will continue to be our primary reporting mechanism for industry and the community to report suspicious border, customs and immigration related activity. I encourage readers of this publication to remain vigilant, and continue to work with us anonymously if you prefer.

A public version of the ABF's Border Permits Review, a whole-of-government review into border permits and associated licences, will be available on our website in coming months. Findings are currently being considered by the Australian Government, and include opportunities to reduce government intervention, remove barriers for international trade, and simplify processes related to prohibited and licenced goods.

Ongoing innovation and improvements

to the way we manage the border is underwritten by our commitment to achieving excellent operational results.

The ABF led Illicit Tobacco Taskforce (ITTF) is working closely with international partners and law enforcement agencies operating across the border continuum, to crack down on the illicit importation of tobacco.

On 26 December last year, the ABF, with the assistance of Singapore Customs, seized around one million illicit cigarettes with an estimated evaded duty of \$1 million, from air cargo in Sydney. The seizure followed advice from the Korean Customs Service.

On 27 December, the ITTF was alerted by another overseas partner agency to a shipment arriving into Melbourne that contained 9.8 million cigarettes fraudulently declared as dough mixers, cake fridges and freezers. The estimated duty evasion was nearly \$9 million.

A third large sea cargo shipment arrived in Melbourne from Hong Kong in early January that contained more than 1.5 tonnes of rough-cut tobacco concealed in tabletops. Information from authorities in Hong Kong helped make the detection possible.

In addition to these successes, Operation CABESTRO was initiated by the ABF in July last year to investigate individuals and groups suspected of defrauding the Australian Government of potentially hundreds of millions of dollars, through claiming false duty drawbacks on imported alcohol.

On 11 December last year, the operation saw about 200 officers execute search



Paul Zalai with ABF Commissioner Michael Outram APM

warrants on 15 properties across Sydney and Melbourne, seizing 800,000 bottles of alcohol, luxury watches, cars and \$1 million in cash.

The ABF will continue to focus on identifying serious revenue evasion that, left unchecked, risks Australia's economic performance and increases the community's exposure to harmful goods. We take black economy activities seriously because they have serious consequences for us and all of you.

Avoiding customs duties gives those who do the wrong thing an unfair competitive advantage over legitimate businesses. Smuggling counterfeit goods can also have serious health and safety risks for our community. Almost all counterfeit electronic goods that we have detected, for example, have subsequently been found to not contain heat retardants or other essential safety features to prevent fires and electrocution.

It is our mission to keep building a prosperous, secure and united Australia.

In the wake of the outbreak of the Novel Coronavirus in China, on 1 February, Australia implemented a whole of Government response to mitigate the risk posed to the health and safety of the Australian community by this global health emergency. The ABF was swift to implement enhanced border control measures to minimise the risk of the virus spreading to Australia, while concurrently facilitating the safe return to Australia of vulnerable Australian citizens isolated in China's Hubei Province. We continue to work with industry to manage risks and minimise the impact of the Novel Coronavirus on Australia's commercial interests.

In an ever more complex and challenging operating environment, I remain confident that together with new and existing partners, we will continue to support the Australian Government's agenda to improve service delivery, reduce red tape, and maintain a border continuum that is simultaneously facilitative, secure, and resilient to global shocks.

Customs Advisory Board providing industry perspectives on customs and border modernisation (ABF Media Release 27 Feb 2020)

Industry leaders will give their perspectives on how to improve the Australian Customs System through the establishment of the Customs Advisory Board (the Board)

The Board, whose ten members were selected from across Australian industry, will provide advice to the Australian Border Force (ABF) Commissioner as the ABF takes forward customs and border modernisation.

"By creating a board of industry leaders with significant expertise in trade and travel, and seeking their advice, the ABF will be well placed to undertake our modernisation agenda and support

Australia's continued economic prosperity while keeping Australia safe", Commissioner Outram said.

"This forum demonstrates the commitment of Australia's private sector leaders to improving Australia's trade and travel systems."

Commissioner Outram will chair the Board, which consists of the below representatives:

- Mr Geoff Culbert, Chief Executive Officer, Sydney Airport
- Mr Shayne Elliott, Chief Executive Officer, ANZ

- Dr Stephanie Fahey, Chief Executive Officer, Austrade
- The Hon Mr Mike Gallacher, Chief Executive Officer, Ports Australia
- Mr Joel Katz, Managing Director, Cruise Lines International Association
- Mr Tino La Spina, Chief Executive Officer International, Qantas
- Mrs Dianne Tipping, Chair, Export Council of Australia
- Ms Jennifer Westacott, AO, Chief Executive, Business Council of Australia
- Mr Richard White, Chief Executive Officer and Founder, WiseTech Global
- Mr Paul Zalai, Director, Freight and Trade Alliance



New department brings biosecurity and the environment together

By ANDREW METCALFE AO, Secretary – Department of Agriculture, Water and the Environment

Our department has a new name—the Department of Agriculture, Water and the Environment.

“
As a department we remain committed to the continuous improvement of our biosecurity system
 ”



This integration links key functions crucial to the Australian agricultural sector and the environment—strengthening our capability to deliver sustainable natural resource policy outcomes.

As a department we remain committed to the continuous improvement of our biosecurity system.

A strong biosecurity system underpins Australia’s clean, green status and our international reputation as a reliable producer of high-quality food and fibre.

The same biosecurity system also protects our natural assets and unique environment from pests, diseases and weeds present in other parts of the world.

Damage to our way of life and environment-based tourism activities could have significant economic impacts for Australia and our communities.

Ensuring Australia’s biosecurity system is robust and effective goes beyond managing risks at the border.

Biosecurity activities offshore, at the border and post-border each form an integral component of a strong and successful system.

Managing biosecurity is a big and growing job. That’s why we work in partnership with industry, government and the community.

I saw a great example of this partnership when I visited our post-entry quarantine (PEQ) facility in Melbourne recently where our biosecurity officers are working closely with industry and state government partners to test their operations for managing bee imports.

Once complete, this work will pave the way for the safe importation of queen bees—a key part of the genetic improvement program aimed at improving the sustainability of local bee populations.

Ensuring Australia’s biosecurity system is robust and successful is also about being

smarter with our resources and looking for new ways to keep pests and diseases out.

To support the system in the future and accommodate increases in travel and trade, we are harnessing innovation and technology to enhance screening and detection capabilities across the traveller, mail and cargo pathways.

We are currently trialling world-first 3D X-ray technology and developing algorithms to automatically detect biosecurity risk material.

Since their deployment in late 2018, our 3D X-rays have successfully increased detections. The seizure rate is double that of traditional X-ray technology at Melbourne Airport and triple the rate at the Melbourne mail centre.

At Melbourne Airport, the X-ray has screened 13,133 bags and automatically detected 3,600 biosecurity risk items. These items include pork products, which can carry African swine fever (ASF). This capability is particularly important with ASF on our doorstep.

Our long-term plans for a robust biosecurity system also include tough regulatory actions against those who put the system at risk.

Many of you would be familiar with recent cases of visa cancellations for incoming passengers who failed to comply with biosecurity measures and vessels being turned away on the grounds of unacceptable biosecurity risk following exotic pest detections.

These cases illustrate our strengthened regulatory stance—the stakes for us are too high to do otherwise.

As I settle into this role, I look forward to working with you to develop a stronger biosecurity system that continues to deliver outcomes that benefit us all.



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Australian Peak Shippers Association - Report from the Chair

By SEAN RICHARDS, APSA Chair / Executive General Manager - Visy Logistics

The Australian Peak Shippers Association (APSA) and Freight & Trade Alliance (FTA) would like to acknowledge the response to the summer's bush fire crisis by so many members and alliance partners with the supply of goods, equipment, transport services and donations. All of whom are simply looking to support fellow Australians in need.

While the massive February rains provided some relief to the East coast, it too caused havoc with flash flooding and erosion of sectors of fragile burnt and drought affected lands.

While the federal and state governments have provided generous resources to support the relief effort, little is being done to support the agriculture sector at its core, struggling to be competitive internationally while dealing with sustained drought conditions and high shipping costs.

We do however have a glimmer of hope that perhaps the Victorian government will take the lead to support our hurting cargo owners.



FTA / APSA representatives were privileged to attend the Ports Industry Roundtable on 30 January 2020 hosted by the Victorian State Government's Department of Transport.

The meeting included a Ministerial Address by **The Hon Melissa Horne MP, Minister for Ports and Freight**; policy recommendations to inform the *Port of Melbourne Port Pricing and Access Review*; an update on actions supporting the delivery of the Victorian Government's freight plan titled *Delivering the Goods*; and an interactive question and answer session allowing stakeholders to openly respond to key findings.

Aligned to the above referenced documents, the government representatives extended an opportunity for direct engagement in the development of policy to deliver the Minister's repeated stated goal of "*growing Victoria's exports*".

Matters of most immediate impact to FTA / APSA members are summarised below:

Port of Melbourne tariff administered against shipping lines

As outlined by Brendan Bourke, Chief Executive Officer Port of Melbourne (PoM), the *Port Rail Transformation Project* (P RTP) is being funded by an increase in the tariff on full import containers of \$9.75 per TEU to take place "*no earlier than 1 April 2020*". The Minister expressed her support of the P RTP which is aimed at reducing truck movements and improving productivity – please refer to the Victorian government statement released yesterday titled *Full Steam Ahead For On-Dock Rail*.

The announcement of the P RTP coincides with the PoM release of *Our Plan for Rail 2020* (as a core component of the *Rail Access Strategy* submitted to the State in 2019) and complements the PoM long term growth objectives as

outlined in their *2050 Port Development Strategy*.

Commentary

- FTA / APSA see significant merit in the P RTP in driving efficiency in the rail supply chain;
- During the PoM consultation process, FTA / APSA raised concerns about the cross-subsidisation fee model with obvious 'winners' and 'losers' i.e. imports cross-subsidising exports (which are exempt of any increase); all road users cross-subsidising rail users; and the fact that initial benefits associated with the location of the on-dock rail will significantly benefit some stevedore operations over others - as one major importer member stated during the engagement process "*why am I paying this significant fee only to fund operational benefits to my competitors?*";
- Rail access is still a key issue for shippers. Not all exporters can access rail sidings to take advantage of this development, in particular, in metropolitan areas where rail is often not a viable option. This port development needs to be part of a cohesive rail strategy for Victoria that opens access to more shippers.
- While a reduction in the fee structure is welcomed (now \$9.75 per TEU as against the originally estimated cost of \$15 per TEU), the FTA / APSA position to the PoM and Victorian Government remains that any fee increase must now be offset elsewhere to maintain the port's competitiveness – the introduction of the new tariff only adds to the need for regulation to wind back the stevedore administered Infrastructure Surcharges and Vehicle Booking System (VBS) fees.

Infrastructure Surcharges

Preliminary findings and policy recommendations to inform the *Port of Melbourne Port Pricing and Access Review* (review) included the

need for setting of standards; “pricing transparency”; improvements to landside access and performance; a phased approach to monitoring supply chain costs (including consideration of the findings of the current ACCC review of Part X of the Competition and Consumer Act 2010); and the potential to progress to mandatory standards through regulation.

Commentary

- FTA / APSA sees merit in the introduction of measures to improve landside access and performance;
- FTA / APSA representatives clearly articulated that failure to regulate will continue facilitation of a “new normal” whereby entities such as stevedores and empty container parks will continue to collect significant revenue from the road and rail transport sectors rather than negotiating pricing with their contracted shipping line clients – as correctly identified in the review, these costs cascade down the supply chain with the addition of administrative fees, resulting in further inflated costs ultimately paid by export and import cargo owners;
- While some form of price monitoring may be beneficial in achieving “pricing transparency”, FTA / APSA put forward a position that market forces are best placed

to determine a commercial outcome – this could only be achieved with regulation to prevent the practice of stevedores collecting revenue via Infrastructure Surcharges (allowing stevedores sufficient lead times to re-negotiate appropriate contracts with shipping lines);

- Shipping line representatives responded by stating that eliminating the Infrastructure Surcharges would force costs back to the lines which in turn may result in increased freight rates – FTA / APSA acknowledged this and reiterated that this remained a preferred outcome in that it allowed cargo owners to negotiate price rather than being subject to an unregulated regime administered by stevedores with no available avenue to negotiate price;
- FTA / APSA sees a need for immediate policy and regulatory invention and does not see a need to await outcomes of the ACCC review - the likely repeal of Part X and an introduction of a Block Exemption regime may not affect existing stevedore practices of recovering costs via Infrastructure Surcharges.

The Victorian government is to be commended for taking the brave lead in commissioning the review with other state and national regulators watching with keen interest. The spotlight is now clearly on

Minister Horne to take the next step to truly champion the cause for cargo owners and to establish an environment to facilitate fair commercial practices.

FTA / APSA will continue to lead industry’s advocacy for reform on Infrastructure Surcharges and will keep members up to date on pertinent developments.

“ We do however have a glimmer of hope that perhaps the Victorian government will take the lead to support our hurting cargo owners. ”



Australian Peak Shippers Association Inc. (APSA)



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Peak shippers welcome competition reform

By PAUL ZALAI – Director and Co-Founder, FTA / Secretariat, APSA

Ships are getting bigger, the shipping line market is contracting and alliances are dominating.

The question for Australia’s shippers (exporters and importers) is whether this translates to better services, more competitive pricing and regular access to markets.

The question for our regulators is how much deviation from standard competition law should shipping lines be allowed to facilitate the dominance of alliances?

The experience in the European Union has been detrimental to shippers with trade bodies recently aggressively arguing against another four year extension of the liberal Consortia Block Exemption Regulation largely exempting lines of regular competition laws.

In contrast, our New Zealand neighbours seem to have got it right.

While accepting the need for shipping line consortia arrangements, the New Zealand competition authorities have introduced

Freight & Trade Alliance (FTA) is a peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian border related security, compliance and logistics activities. FTA represents 375 businesses including Australia’s largest logistics service providers and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA).

APSA is the peak body for Australia’s containerised exporters and importers designated by the Federal Minister of Infrastructure and Transport under Part X of the Competition and Consumer Act 2010. APSA represents many of Australia’s largest shippers and provide advocacy support to major industry associations:

new statutory provisions adding rigour to their block exemption regime requiring evidence of benefits to shippers.

So how is Australia dealing with this?

Part X of the *Consumer & Competition Act 2010* has evolved since first introduced in the Trade Practices Act 1974 providing broad exemptions from competition law for registered shipping lines to coordinate with each other in transporting cargo to, or from, Australia.

Shipping line market consolidation plus the emergence of stevedore-imposed Infrastructure Surcharges has resulted in supply chain costs rapidly increasing, exposing significant deficiencies in the effectiveness of Part X in being able to achieve basic shipper protections.

The Australian Competition and Consumer Commission (ACCC) has recognised a need for reform with the 3 December 2020 release of a discussion paper titled *Proposed Class Exemption for Ocean Liner Shipping*.

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) have prepared a formal joint submission recommending:

- repeal of Part X,
- a replacement block exemption regime with terms to be drawn as narrowly as possible to permit the desired activities to be operationalised,
- retain positive features of Part X into a block exemption regime including prescribed minimum levels of service,

- exclusion in a block exemption to fix price or surcharges,
- mandate incorporation of stevedore fees within shipping line contracts (negating stevedore-imposed Infrastructure Surcharges administered on the transport sector),
- introduce a registration process administered by the ACCC,
- continuation of APSA as a designated peak industry body to support registration approval,
- alignment with the New Zealand block exemption regime to form a regional approach, and
- practical legal instruments to allow shippers to negotiate collective freight contracts with shipping lines.

Importantly the submission endorsed the ACCC as being the appropriate entity to oversee shipping competition reform recognising its track record of strong compliance enforcement, noting last year’s criminal cartel prosecution against a major shipping line for price fixing in relation to an unregistered agreement, resulting in an order by the Federal Court to pay a fine of \$34.5 million

We commend the ACCC for commencing this necessary reform and we look forward to ongoing engagement to support our shippers compete in international markets, supported by appropriate, modernised regulation.

The FTA / APSA submission is available at www.FTAlliance.com.au



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Defining Risks in Terminal Development

By ANDREW PENFOLD, Director – MPL

The best infrastructure projects in New South Wales' history have been the ones undertaken in preparation for future needs. The Snowy Hydro and the Sydney Harbour Bridge are iconic examples. The projects that end up costing the taxpayer the most and seem to never quite get it right are those that are built after the need has become chronic.



“Essentially, the Australian container sector needs to be modernised – in ten years’ time the Waterfront and containerisation in Australia will be transformed”

The container revolution has both facilitated and driven globalisation. The transfer of production to low-cost regions and increasingly complex supply chains have been the major factors generating trade growth. The model is now changing. These changes – combined with technical shifts in the container sector – are multiplying risks and increasing pressure on trading margins. The levels of risk are now as high as those that followed the Financial Crisis.

The many shifts impacting on the container market are considered in a far-reaching new study, “**Container Terminals: Paths to Profitability**” that I co-authored with Remco Stenvert (a fellow respected market analyst).

The Australian container waterfront faces real change in coming years. These centre on larger vessels, improved automation and productivity with these changes placing increasing pressure on profitability.

The container market since the Financial Crisis has seen steady volume growth and resulting high demand for port and terminal investment. But there are underlying problems, and developing a comprehensive understanding of the prevailing risks should be the central preoccupation of investors and operators in each part of the container transport chain. It is, however, far from clear that this is the case.

Increasing Risks in Container Business

So, what are these risks? The report outlines those that are external to the container business over which investors have very little control and those that sit within the business sector.

Other key factors considered are:

- **Globalisation and protectionism:** Containerisation has ridden the wave of globalisation and protectionism and is now – once again – a major factor in risk analysis.
- **Financial instability:** recovery since the Financial Crisis has been built on massive increases in debt. Essentially, consumer demand has been paid for by

borrowing – the scope to extend this is limited.

- **Structural demand change:** a steady decline in the GDP: trade multiplier has emerged. As consumption is maximised growth is shifting from an OECD-driven demand profile to an intra-Developing World pattern – generating a significant risk increase.
- **Near-sourcing:** Building pressures to repatriate production to the major OECD economies is a manifestation of increasing protectionism and technological change.
- **Technological change:** two clear issues exist, blockchain (digitisation) and 3D printing, with profound implications for the container sector.
- **Environmental pressures:** international shipping and terminal development has largely escaped from environmental pressures – until now.

The port/terminal developer has no direct control over any of these risks. Yet, as if these uncertainties were not enough, the terminal investor faces a whole set of container-specific issues:

- **Shipping over-capacity and instability:** container shipping is a very difficult market. The search for scale economies by using much larger vessels results in demand concentration. This means larger capacity terminals with limited demand growth. The need for terminal modification represents a classic ‘prisoner’s dilemma’ for developers. Do they expand capacity or lose market share?
- **Alliance instability:** investing in a new terminal is a long-term project, but long term partnering almost impossible. Counter party risk is key.
- **Shipping line terminal investment:** uncertain development driving up capacity and obscuring returns.
- **Larger vessels and cascading:** forced larger vessels into trades ahead of demand – again, driving the need for investment.

- **Unrealistic expectations and overcapacity:** extrapolation of unrealistic demand trends is prevalent in this sector.

- **New company involvement:** as new traders and logistics companies such as Amazon and Alibaba increase their presence, vertical investment in the transport chain will increase, meaning new competition with investment capability.

- **Tightening regulatory framework:** increased regulatory pressures and attempts to link approval to 'supporting' hinterland investments are intensifying.

Identifying and managing risks and focusing on trading margins is essential to successfully deal with all these issues. The report defines the nature of risk and develops a comprehensive blueprint for long term profitability in the face of these issues. The days when increasing demand would rescue a marginal project are gone.

Implications for the Australian waterfront

Clearly, these pressures will be felt in Australia. If – as seems likely – slower demand growth is recorded, then margins will come under increasing pressure. The days when inefficient port operations could be obscured by rising demand and prices are past. At the same time, Australia is lagging behind in the ship size developments noted on all the major trades. The current three port rotation is being held back by port limits at Melbourne. It will become increasingly important to ensure that much larger vessels are berthed. Without this agreement the pricing of handling (especially when linked to controversial infrastructure charges) will increasingly delink Australia from global best practice.

Increased financial pressures will be exacerbated by greater environmental pressures, with these costs further eroding margins.

Essentially, the Australian container sector needs to be modernised – in ten years' time the Waterfront and containerisation in Australia will be transformed – bigger vessels, improved intermodal links and increased emphasis on the environment will be at the centre of these changes.

Counter measures

What can be done to counter these powerful forces of change?

The Study particularly considers this from the perspective of container terminal operations – dealing first with the foreseeable trade picture and then going on to identify and discuss in detail advanced methodology and proven solutions to achieving container terminal profitability across a range of terminal types and scenarios.

The future for container terminal operations will be characterised by:

External Factors – ports have zero control	
Globalisation and protectionism	Pace of demand growth
Financial instability	Short term volatility in demand
Structural demand change	Maturation of the market will moderate container growth
Near-sourcing	Reduced overall significance for deepsea operations
Technological change/supply chain integration	Higher investment
Environmental pressures	Higher capital and operating costs
Intrinsic Factors – ports have limited direct influence	
Shipping over-capacity	Pricing pressures on stevedoring
Alliance instability	Short term shifting in demand
Shipping line terminal investment	Increased competition for third party operators
Larger vessels & cascading	Large scale investment to handle larger tonnage
Unrealistic expectations and over-capacity	Danger of excess capacity driven by Port Authorities
Automation	Increased costs and uncertain benefits
New company involvement	New players in the market
Concession renewal/extension	An area of increasing concern and difficulty

The approach to negotiating with liner clients, the use of risk management techniques to minimize threats, how to consolidate and expand market share, lock in cargo shipper support and build resilience to aggressive competition are all recurring themes.

The Study divides into two main parts over its 220+ pages:

PART 1; Major Trends Impacting Container Terminals which addresses four key subject areas:

- Trends & Risks in Container Terminal Demand - The Container Shipping Market
- Terminal Investment Trends - Forecast Demand Growth

PART 2: Managing for Maximum Profitability which drills down into the key aspects from which to build successful business solutions.

- Winning Competitive Strategies – Customer Behavior – Servicing Customers
- Effective Pricing for Stevedoring Services – Assessment of Cost & Service Levels
- Comparative Port Cost Analysis – Assessing the Real Risk of Losing Customers
- Competing for Transshipment Volumes – Building Revenue Robustness

The Study combines a detailed assessment of current and future market conditions together with identification and detailed discussion of the key elements to consider and new generation methodology and systems that deliver real profitability.

**Further information can be obtained from: info@mplimited.net
Website: www.mplimited.net**



ADVICE FOR GLOBAL SHIPPERS ON MANAGING SURCHARGES FOR LOW SULPHUR FUEL

By PAUL ZALAI - Director and Co-Founder | Freight & Trade Alliance (FTA), Secretariat | Australian Peak Shippers Association (APSA) & Director | Global Shippers Forum (GSF)

The Global Shippers Forum is the world's leading trade association for shippers (importers and exporters) engaged in international trade, organising the movement of goods in all modes of transport. GSF represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

The Australian Peak Shippers Association (APSA) is Australia's representative and has Board representation on the GSF.

The mission is to influence regulatory developments affecting international freight transport and the policy decisions of governments and international organisations as they affect shippers and receivers of freight. With the introduction of new global rules for limiting sulphur pollution from ships on 1 January 2020, the GSF has issued helpful advice for importers and exporters facing demands for surcharges from shipping lines seeking to cover their costs of compliance.

GSF's 'Top Ten Tips for Sulphur-Surcharged Shippers' highlights the fundamentals of the new rules that all vessels will now be required to meet in all parts of the world. But it also encourages shippers to challenge the basis of any surcharges to make sure they understand exactly what they are being asked to pay extra for, and whether it can be properly explained and justified by carriers – refer below article.



James Hookham (Secretary General, GSF), Sean Van Dort (Chair, GSF) and Paul Zalai (Director, GSF)

James Hookham, GSF's Secretary General, commented:

"With the container shipping industry in a trough of depression, the additional burden of complying with tough new rules on emissions from vessels is a necessary but unwelcome start to 2020. The shipping industry has widely assumed that the costs of cleaning up its environmental act can simply be passed onto its Customers (shippers) in the form of surcharges. Whether that will be the case will be the subject of individual negotiations over the coming months. However, shippers should be demanding clear and consistent explanations of any surcharges demanded and GSF's 'Top Ten Tips for Sulphur-Surcharged Shippers' reminds our members of the ground rules and to scrutinise carefully any surcharge demands made during contract negotiations".

"Ultimately, the industry needs to move on to a more mature pricing regime with confidential contracting and all-inclusive charges becoming the 'new normal'. The shipping industry needs to wean itself off surcharges, just as much as it does high-sulphur fuels."

James Hookham concluded:

"In 2020 the environmental performance of the shipping industry will come under intense scrutiny in the world's regulatory forums. The IMO low sulphur fuel regulation will be followed by crucial meetings on reducing greenhouse gas emissions and shipping's carbon footprint. The industry needs to demonstrate a responsible attitude to meeting the costs of its environmental responsibilities to retain the confidence of customers and regulators".

IMO Sulphur Emissions Limit Regulation 2020 ('IMO 2020')

Top Ten Tips for Sulphur-surcharged Shippers

New global limits on atmospheric sulphur emissions from ships entered into force around the world on 1 January 2020. 'IMO 2020', as it's known, will force through the biggest change in ships' operating practices since the introduction of steam power and bring about a massive reduction in the environmental impacts of sea transport.

Whilst shippers should support this reduction in harmful emissions, they should be wary of being expected to pick up the bill for achieving them! So here are 10 things to remember as you sit down to negotiate your 2020 contracts with your favourite carriers ...

1. It's a discretionary charge not a mandatory tax

Yes, shipping lines have got to meet the new IMO limits on sulphur emissions but there is no law that says they have to pass that cost on. Whether as the cargo owner you pay more is purely a matter for commercial negotiation with your carrier. There may well be new and potentially significant costs but if you had a contract rate agreed in 2019 that extends into 2020 any new costs should already be included in that price – IMO 2020 has been known about since at least 2017.

2. Buying (more expensive) Low Sulphur Fuel is not the only option

Other compliance options exist to meet the IMO requirements. These include the fitting of exhaust gas scrubbers (which allow conventional grades of fuel to be used) or converting engines to run on Liquefied Natural Gas (LNG). Both options are hefty capital expenditure items and will affect operating costs depending on the age of vessel, the carrier's depreciation policy and prevailing interest rates. But they will have a very different effect on operating costs to a sudden increase in fuel price. Make sure you ask what compliance strategy your carrier is following.

3. Don't lock in an early rate or consolidate any sulphur surcharges into BAFs

The price of Low Sulphur Fuel Oil will fluctuate over time, as do all commodity prices. But on top of that refiners will be putting more of this product into the market as demand rises. Any early peaks in price can be expected to stabilise within a few months and settle around a long-term norm. So, don't lock-in any surcharge at an early, possibly peak, price and keep an eye on actual fuel costs using a fuel price tracker service that covers prices in different parts of the world. Local fuel costs will depend on the local commodity price, plus the costs of delivery to bunkers plus any local taxes.

4. "So how did you work that out?"

Calculation of fuel costs is a precise science not a black art. Carriers should know to the nearest tonne and tens of dollars what fuel they have bought and used, given its costs. You should therefore expect a prompt and clear answer to your request to show the calculations that lie behind any surcharge demanded of you.

5. Low-sulphur fuel is nothing new

IMO 2020 is the latest step in a decade-long programme of reducing sulphur emissions from vessels. Ships entering most EU and US waters have been required to switch to LSFO in these Emission Control Areas since 2005. This means that LSFO has been available in these parts of the world for at least 15 years. Yes, demand will spike when every ship suddenly has to use it all the time but there is nothing novel or challenging about using or acquiring supplies of Low Sulphur Fuel Oil for the shipping industry.

6. Watch for the scrubber in low-sulphur clothing

Most carriers operate in alliances or consortia – effectively vessel sharing agreements, where your containers could be carried on another carrier's vessel. So why pay a fuel surcharge for a ship fitted with scrubbers or converted to natural gas? But don't you work it out - get the carrier to explain how they are going to avoid charging you for a cost they may not incur.

7. Consider joining a benchmarking service

If you end up paying surcharges, a benchmarking service will let you see researched and informed estimates about what the additional cost of fuel should be, based on the vessels operated on that route, the chosen methods of compliance and the prevailing costs of fuels. GSF is providing this service for members through partners. Tell us if you are interested in joining.

8. If it looks like an arbitrary figure and feels like an arbitrary figure ...

... then it probably is an arbitrary surcharge! There is no single amount or simple percentage for the added cost of using low sulphur fuel, so watch for rounded increases, or predictions that the same costs will apply all year, or in all parts of the world. They won't.

9. Don't fall for the sympathy card

Shipping lines buy prodigious quantities of marine fuels every year, including Low Sulphur Fuel Oil, and will hedge against currency movements and fluctuations in commodity price. They have had two years to prepare for this and you can bet they won't have burnt a drop more of the stuff until they had to ... 00:01 UST Wednesday, 1 January 2020.

10. Sulphur surcharges stink!

Ultimately this is about the shipping industry cleaning up its environmental act. In any other sector these costs would be absorbed or passed on through normal contract negotiations. If the shipping industry could bring itself to negotiate all-inclusive price and confidential contracts as a norm then surcharges, including for sulphur, can be consigned to history, where they belong.

GSF Secretariat
January 2020



The Victorian Government points the finger at shipping lines for port price increases.

Co Authored By TRISTAN ANDERSON, Leader – Logistics and Infrastructure Policy- GHD and JACQUI MARSHALL, Senior Advisor – Regulation and Access - GHD

Over the past year, the introduction and escalation of port-related pricing and infrastructure surcharges has dominated the Australian port sector. Price increases were an initial reaction by stevedores to port privatisation and increasing rental charges; however, these charges are now reflecting a structural realignment of cost recovery by stevedores.

In 2019, the Victorian Government engaged Deloitte to review stevedore pricing, the outcomes of which were released to industry stakeholders last month. Initial indications of the findings of the Deloitte report (yet to be released) will likely leave many in the industry feeling short-changed.

In the same week that the Deloitte report briefing took place, the Port of Melbourne announced that it would be levying a perpetual \$9.75/TEU charge on import containers to fund a rail transformation project. It is widely accepted that port/ rail interfaces need improvement and the required capital investments may need to be subsidised in some form, though the timing of the announcement was perhaps unfortunate.

It is impossible to dissect the evidence or the methodology used by Deloitte as the report has not been released.



Notwithstanding, from the recent industry Round Table facilitated by The Hon Melissa Horne MP, Minister for Ports and Freight, it became clear that Deloitte have largely absolved stevedores from unjustifiably increasing charges and have instead blamed shipping lines for the most significant cost increase impacts. This likely shifts regulatory responsibility from the States and into the federal arena.

In response, industry is calling for regulators to intervene to redirect stevedore price increases via shipping lines rather than trucking companies. This is because shippers have a better negotiating position with shipping lines who operate in a more competitive market, which ought to deliver some price-stabilising competitive tension. The diagram (above) shows the mismatch between negotiation power and commercial transactions from a shipper's perspective. Stevedores hold the greatest amount of power in respect of commercial transactions, while shipping lines hold the greatest negotiation power.

The impact of the proposed realignment for regulators to redirect stevedore price increases via shipping lines is shown in the second diagram (on the right). The proposed reform would reduce the commercial transaction power of stevedores and better align it with the negotiating powers of shipping lines. This is likely to result in an overall net benefit by way of increasing competition, reducing prices in real terms and allowing for a

better exchange of information between end users (shippers) and service providers.

The Deloitte report should be released to give industry an opportunity to respond to the various claims and findings. Understanding stakeholder views is also paramount in implementing meaningful change in the industry to improve the efficiency and productivity of Australia's import/export markets.



GHD Advisory provide port development, land-side optimisation, pricing, and access services to ports internationally. The authors' offer what is intended to be a 'neutral' view of the issues and possible responses to a recent report onto stevedore pricing.



Physical or Digital a Virus is still a Virus

By BRETT CHARLTON, Chair – Tasmanian Logistics Committee

If there is a cosmic voodoo community in the vast universe out there, then our little planet seems to have made someone cranky as there are a few pins in us at the moment....for the sake of space I will restrict this article to viruses.

The Corona Virus (or COVID-19 as it is now known) has been in the headlines for some time now and there is much detail around the impacts on trade. From a shipping point of view there are considerable challenges current and ahead that need to be navigated. During the period of the Lunar New Year, volumes are traditionally low regardless and the lines implement "blank sailings" (meaning the lines drop calls to some ports as the volume is not there). With an extension to the Lunar New Year period the extension of the blank sailings has also come into effect and therefore there are considerable changes to sailing schedules to accommodate the lower volumes. Couple this with the Australian Government ruling of international vessels from China having to

have been at sea for 14 days and rotations from China have also had to be changed (for example some lines have changed rotation to call Melbourne before Brisbane to spend more time at sea). Truck drivers in China are in short supply and as such there is a backlog of equipment at China wharves – some lines are charging an US\$1000.00 surcharge on refrigerated containers due to there not being any plugs available. One shipping line has reported that their global documentation centre in Wuhan has lost significant staff numbers from resignations to be with family - so not only is there the issue of getting back to work, replacement of staff will loom large. We are all hopeful for a swift ending to this situation and our thoughts and prayers go to our colleagues and friends in China, but the ramifications of this event will be felt for some time yet.


From a biological virus to an electronic one. If Tolls dog died you could write a Country and Western song for them – it is the only thing left that hasn't happened to them. On the back of the chaos that was summer (see last article) Tolls have had acid added to their woes with a cyber-attack of biblical proportions. You know when your fourteen year old loses his mind when the internet goes down for five minutes, well imagine losing all electronic comms when you run ships, trucks, aircraft and warehouses etc. in 75 countries. This is exactly what has happened with Tolls and whilst there are some positive vibes being given to the


market about coming back on line, by all accounts a lot of the processes in place are still manual at the time of writing. This has echoes of the Maersk cyber-attack in 2017 and is a reminder that our infrastructure is based on electronic communications and without them...well...we lose our minds

In November this year the Tasmanian Logistics Committee (TLC) and the Freight & Trade Alliance (FTA) will be hosting the fourth logistics and shipping forum at the Australian Maritime College. Over the last three years the forum has attracted excellent speakers and a mixture of high level executives, operational specialists and students in the logistics and maritime field. With so many topics to choose from that are relevant to our industry today, the logistics and shipping forum in Tasmania has proven itself over the years as an excellent way for industry to learn and discuss issues that are current and emerging – we look forward to hosting this event and recommend booking early as in previous years the event has reached capacity with some people disappointed in not being able to attend.




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Why now is the time to plan for Perth's new port

By NICOLE LOCKWOOD, Independent Chair - Westport Taskforce

For more than 120 years, Fremantle's Inner Harbour has adequately serviced Perth's trade needs. It has been Western Australia's primary container port since the shipping container trade first came to Australia in 1969. However, a number of emerging triggers are now combining and will ultimately make it unviable for the Inner Harbour to remain Perth's primary container port. Given this inevitability, it is prudent that we begin planning now. Let me explain.

Fremantle was never destined to be Perth's only port. Since the 1950s, Perth's urban planning scheme has anticipated the development of a second overflow facility in the Cockburn Sound area of the Outer Harbour, managed by Fremantle Ports (who also operate the Inner Harbour).

The plan to develop a major port in the Outer Harbour – in addition to the five bulk 'ports' already operating in Cockburn Sound – has been investigated and supported by various State Governments for the past 70 years. No fewer than eight port planning exercises have been embarked upon, though not all completed. Yet, for a variety of reasons, including changes in government and support, challenging economic conditions or variations in trade growth, none of these plans progressed through to construction of a new port for Perth.

The Westport Taskforce (Westport) was established by the McGowan State Government in 2017 to investigate Perth's trade and freight requirements for the next 50 years and beyond. The process was designed to bring industry and the community to the table to undertake a

holistic assessment of the freight network encompassing port, road, rail and land capacity. In undertaking that assessment, a key focus was understanding the environmental values and impacts; the range of community impacts and concerns about expanding current infrastructure and building new facilities; and, of course, the economic benefits and implications.

In December 2018, Westport released a major progress report which highlighted the constraints in the supply chain servicing Fremantle. It became clear that the supply chain was, in fact, the Inner Harbour's weakest link, and would reach its capacity well in advance of the port. Rigorous investigations showed that the supply chain capacity of Fremantle was around 1.2 million TEUs (based on current operations).

Westport's trade growth forecasts – which were extensively peer-reviewed – estimate Perth's container trade will reach 1.2 million TEUs around the mid-2030s.

In line with this, detailed modelling of the Inner Harbour's road and rail linkages, produced by Westport in partnership with Main Roads, Arc Infrastructure and the Public Transport Authority, also indicated that both networks are likely to reach their capacity around the mid-2030s. That is a mere 15 years away.

Given it takes, on average, ten years to plan and construct a new port, it is imperative to commence the planning process now. Even if trade growth does not reach Westport's forecast levels, this provides extra planning time – but merely years and not decades.





So, why not just build a new highway to the port? Won't that fix the supply chain issue? Unfortunately, that will not solve the problem. Firstly, due to residential encroachment, it's not possible to build any new roads that reach all the way to the port. The upgrades required to the existing roads are substantial and would impact surrounding residents. Secondly, the growing congestion is not, in fact, due to freight movements at all, but increases in passenger vehicles, which results from population growth and a trend towards higher density living. Thirdly, the supply chain constraints are but one driver in a complex tapestry of major triggers that will eventually converge to make a new port the best option.

There are actually six main drivers that will determine when Perth will need a new port and when:

1. increasing road congestion caused by passenger vehicles;
2. bigger ships begin arriving which exceed the Inner Harbour's capabilities;
3. optimisation of port assets, taking into account that Fremantle's wharves are likely to reach their optimal asset life in the next 20 to 30 years;
4. the 'highest and best use' of the Inner Harbour's land shifts away from its current industrial purposes towards residential and commercial use;
5. the Inner Harbour loses its social licence to continue operating; and

6. the broader operating environment, in terms of technology, policy and regulation, and expectations regarding environmental impacts, shifts enough to influence decision-making.

For each driver, a tipping point will be reached that will trigger the need for action. Once a tipping point is reached, Government will need to decide whether the better option is to continue investing in Fremantle (as far as its capacity and the capacity of the supply chain will allow) or to instead invest in a new port. The timings of when these drivers will reach their tipping points is variable, dynamic and often beyond Government control.

Government should only consider investing in the Outer Harbour port once it is commercially, socially and/or economically viable to do so. Predicting just when that time will come – and at least five years in advance to allow sufficient time for construction – is a significant challenge.

While it may be possible to solve some issues with incremental upgrades or operational changes in the near-term, eventually, the cumulative amount of work and costs to keep addressing all six drivers will make the transition to a new port a more fiscally sensible option.

Given the combination of emerging drivers for change, Western Australia needs to plan now for its new port and be ready to move ahead, when the time comes. An important part of that preparedness is protecting the corridors for the roads, rail, port and

industrial land required by any new port. Given the rate of population growth and the risk of encroachment into those required corridors limiting options for the State, it's imperative that the planning for Perth's new port happens now. Benjamin Franklin's words should be ringing – failing to plan is, indeed, planning to fail.

It is important to note that Westport is not an insular team of public servants beavering away in a basement somewhere. In a solid example of government and industry collaboration, Westport comprises a multi-agency project team governed by nine State Government agencies, who regularly consult with an industry and community Reference Group of 93 organisations. Westport's methodology and outcomes has been comprehensively peer reviewed by a panel of independent experts, and the technical work has been undertaken by some of the most well-respected consultancies in their fields.

Westport, through its rigorous examinations, has determined that the need for a new port is inarguable and the tipping point for Fremantle is actually much closer than first thought. The smart thing to do is start planning for this change now.



A new study to better inform freight movements

In 2009 the Port of Melbourne Corporation commissioned the Container Logistics Chain Study (CLCS Study) for containerized freight. This study set a benchmark in port system understanding. Fast forward eleven years and the Port of Melbourne Operations is leading a new Origin and Destination Study.

Over the past decade, supply chains have evolved and industry continues to deliver innovative solutions to service changing customer needs. At the same time, Victoria has experienced rapid population growth, and year on year increases in trade volumes (see graph right). More people and more goods, combined with the rapid adoption of online retail inevitably means more freight movements across metropolitan Melbourne. Managing the transport network now, and planning for the future is complex, and requires a thorough understanding of the supply chain, and the network that underpins it.

Key to this understanding is quality and comprehensive data that shines a light on how freight movement operates today, and how it is likely to continue into the immediate future.

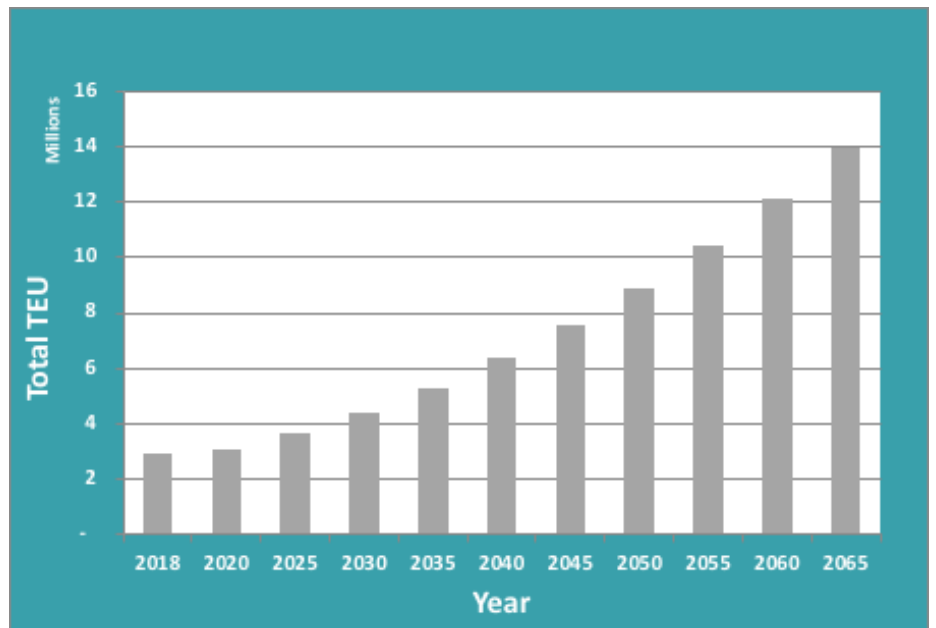
Understanding where our freight moves is critical to ensure we have the right infrastructure, industrial land, planning controls and policy settings to support efficient supply chains.

The previous study in 2009 analysed thousands of cargo movements to create a rich picture of how port freight and empty containers moved around Melbourne and Victoria.

Where does our freight move?

The original Victorian study was undertaken in 2009 with the data used extensively by industry and Government, including:

- In support of planning controls to protect freight routes and industrial land from encroachment
- Key freight route capacity planning
- Supporting business cases for investments in infrastructure and logistics activities



Forecast container volumes through PoM

- Forecasting and scenario planning
- Marketing and business development

In July 2018 Freight Victoria released Delivering the Goods, Victorian Freight Plan. The Plan noted:

"The absence of robust and reliable information on the freight and logistics sector has been identified as an impediment to improvements in the sector and in government infrastructure planning for at least the last two decades".¹

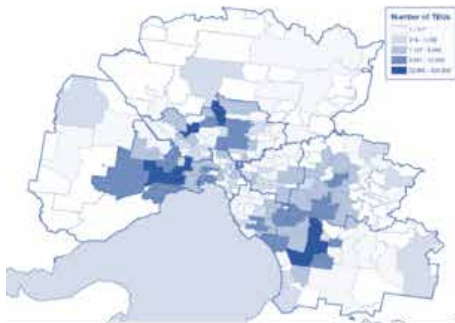
A key recommendation from the freight plan was to measure, monitor and report on container origins and destinations via a study every five years in conjunction with the Port of Melbourne

A new study

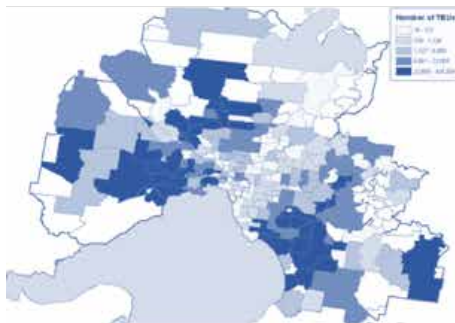
The Port of Melbourne Operations Pty Ltd with support from Freight Victoria is updating the Port of Melbourne origin and destination data to support our end to end supply chains. Given the large number of business that move goods through the port, Port of Melbourne is well positioned to lead the study in partnership with the expert consultants. This study will provide a comprehensive picture of freight flows in Victoria, including:

- Understanding and insight into the port container supply chain including activities, timing and the movement of unpacked/ pre-packed goods distribution
- Understanding of how our supply chain is changing over time

¹Delivering Goods, page 51 <https://transport.vic.gov.au/ports-and-freight/freight-victoria>



2009



2050 (forecast based on 2009 data)



Metropolitan area dominates imports

Almost 90% of all imports are distributed within 50km of the port.



Balanced distribution

Imports across Melbourne see roughly one third of deliveries to the West, North and East/South East.



Trend shift emerging

The destinations with the highest growth seemed to be in the west of Melbourne, which matches logistic land take up rates.



Exports balanced between Metro and Regional

The export market has much longer supply chains than imports and emphasis on regional planning is required to maintain the competitiveness of Victoria's exports.



Mismatched operations

78% of import containers are staged at a temporary location before being delivered to their final destination to be unpacked.

The 2009 OD Study provided insightful information on freight flows

- Port landside interface requirements, transport demands and trends
- Identification of demand pressures on existing transport infrastructure
- Base data for optimization and scenario analysis to assist PoM, Government and importantly, the wider economy
- Understanding of supply chain costs and potential opportunities for efficiency
- Providing insights and understanding of how the growth of container volumes (see graph – Forecast container volumes) respond to changes in consumption and production locations and in turn, how this correlates with urban planning decisions, urban growth plans, and infrastructure investments.

On completion, the O&D Study will be released for public reference with the intent that all port users and the wider supply chain can be better informed.

Bringing the industry together

In order to complete the O&D Study, some data will be purchased. However, inland origin and destination information will need to come from industry. For the study to have meaningful impact, the Port of Melbourne hopes to engage with many industry stakeholders to participate in the project.

PoM is currently engaging an external consultant who will reach out to industry to seek participation and to collect data. This data will be collected and hosted by an external consultant ensuring confidentiality.

There will be four stages where the consultants will work with industry to collect the data critical to the success of this study:

Stage 1 – Meet with industry to provide information about the study

Stage 2 – Seek cooperation with industry to provide the data required

Stage 3 – Collect the data (externally collected and hosted by consultant)

Stage 4 – Follow up on any additional needs.

Once all data is collected, the external consultant will analyse the data to produce an aggregated, level of analysis to support a broad range of uses but ultimately to support improved efficiency and productivity of our port freight supply chains.

Whole of industry participation needed

A range of data sources are required to build a cohesive, consistent and representative picture of container journeys.

The Port of Melbourne seeks entire industry participation to ensure completeness of data and to provide an effective resource for industry.

Next Steps

PoM will invite the industry for an information session in April 2020 to provide details of the O&D Study and answer all questions from stakeholders.

We take pride in taking a leadership position to support our stakeholders in prudent and efficient commercial decision making. By commissioning the O&D Study in partnership with Freight Victoria, we want to facilitate trade and support industry growth. Success of this O&D Study will rely heavily on industry support and we look forward to working with industry to complete this analysis and share the findings with all stakeholders.

See the Port of Melbourne Website from 1 April for details, www.portofmelbourne.com/

Port of Melbourne



NSW Ports announces new Chair

NSW Ports has announced that Paul McClintock AO will step down as Chairman of the Board next month after more than 6 and a half years with the business.

He will be succeeded by incoming Chair, Patricia McKenzie, who brings to the role many years' experience as a non-executive director and chair of government and private sector organisations. Ms McKenzie has a strong background in the energy industry and is currently a non-executive director of AGL Energy Limited and The Housing Connection, a not-for-profit organisation. She has previously been Chair at Essential Energy, Healthdirect Australia Limited and Diabetes Australia, and has held Board roles at APA Group, Transgrid, and Macquarie Generation Limited.

Speaking about her appointment, Ms McKenzie said she was pleased to be

joining such a strong and reputable organisation, NSW Ports manages a \$5 billion asset portfolio consisting of NSW's key trade gateways of Port Botany and Port Kembla, and two intermodal hubs at Enfield and Cooks River.

"I am looking forward to the opportunity to work alongside both the Board and the executive team to continue to drive sustainable growth of the ports and intermodal terminals."

NSW Ports Chief Executive Officer, Marika Calfas welcomed Ms McKenzie to the role and thanked Mr McClintock for his contribution to the organisation, "Paul joined NSW Ports in 2013, just after NSW Ports took over management

*Patricia McKenzie
(incoming Chair
NSW Ports)*



of Port Botany and Port Kembla from the NSW Government. Throughout the years he has helped the business transform into a world class port and logistics manager focussed on driving sustainable growth," Ms Calfas said. "Paul has left an enduring mark on the company and I want to take this opportunity to publicly thank him for his long-standing support of and commitment to the business and his leadership of the Board and guidance to the executive team."

Ms McKenzie's appointment takes place on 5 March 2020.

For more media information please contact NSW Ports on 0410 597 547 or vida.cheeseman@nswports.com.au





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EmploySure study reveals that Aussie workers have trust issues. Here's what you can do.

By, LEIGH JOHNSTON - Communications Manager, EmploySure

A study has revealed that Aussie workers have some trust issues, and the sobering data should be a wake-up call for employers.

EmploySure's State of Work Report, which surveyed more than 600 working Australians, found that 1 in 4 respondents weren't sure if they could trust their boss. Meanwhile 1 in 5 employees don't like their boss or are indifferent altogether. Interestingly, it's employees who have been with their employer longer than five years who have the lowest levels of trust in their boss.

Yet positive working relationships between managers and their staff are a huge contributor to business growth and success. It begs the question: how has trust become such a big issue in the workplace?

"There can be many factors at play, and they can vary across employees," says Jessica Laina, Senior Employment Relations Adviser from EmploySure. "Trust is one of those intangible elements that goes beyond the professional realm into the personal. Everything from the way a manager might assign work to

whether they take an interest in the personal lives of their employees can influence trust."

Common trust inhibitors

These can include not making adequate time to meet with staff, refusing to talk to subordinates or not supporting career progression. These are all symptoms of a common problem: an unwillingness or inability to build relationships with employees.

"How a boss deals with staff, both as professionals and as people, will ultimately determine the level of trust between them," Laina adds. "Ultimately it's a question of relationships and treating people as humans rather than resources."

Developing trust, and avoiding favouritism

Laina says that one of the most powerful ways to develop trust is to see the person your employee wants to become and help them achieve it.

"Asking them about their professional goals and making a commitment to supporting them repositions a manager as an ally, and is an instant trust earner," she says.

Management style can also be a major factor in building, or ruining, trust, and bosses in particular should be wary of playing favourites with their staff.

"Whether it's real or perceived, employees are highly attuned to favouritism in the workplace. It can be a major demotivator for employees, and completely erodes a relationship," Laina says.

Although few managers would admit to playing favourites with their staff, many biases are unconscious and Laina recommends putting steps in place to avoid favouritism.

"Sometimes it can be hard to recognise this kind of behaviour in yourself, so it's important to have some self-awareness about how you're managing your team and interacting with them. From there, you can make a commitment to avoid favouritism and put in place practical steps to avoid it."

It's about relationships

While the causes of mistrust can be complex and varied, the solution is often simple: acting with integrity and taking the time to build relationships with employees. In simple terms, it means putting titles and reporting lines aside and making sure staff know that you support them. It also means understanding their work-related problems and offering constructive solutions.

"In many ways what many employees want from their boss is quite simple: they want to be treated fairly, they want to feel like their boss has their back and that they will do what they say they are going to do. Get those things right and trust follows."



EmploySure is Australia's leading outsourced HR solution for over 25,000 small and medium sized businesses; providing customised expert advice, documentation, and protection to manage their workplace with confidence. For more information on EmploySure's employment relations and health and safety solutions visit www.employsure.com.au



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Watch Out for that Load! - Safe Container Loading Practices

By NEIL CHAMBERS, Director – Container Transport Alliance Australia

Poor cargo loading and inadequate cargo restraint inside shipping containers can be a “hidden menace” to Australian road safety and cargo handling safety, not to mention an insurance industry nightmare.

As an importer, how are you making sure that the way in which your suppliers overseas pack cargo into shipping containers will meet Australia’s road and workers safety laws when they arrive, as well as international shipping requirements while in transit by sea?

Conversely, as an exporter, what instructions and training are you giving to those who pack your containers safely for landside distribution to container terminals, and for their vessel voyage to the port of destination?

Are your Dangerous Goods (DG) packed, labelled and declared correctly?

Over 80% of containers through Australia’s capital city ports are



transported by road, with a current estimate of over 3 million truck trips per annum carrying full containers to and from ports. With the forecast rise in the container freight task to 2032/2033, the number of truck trips is predicted to more than double to over 7 million trips per annum.

Under the Chain of Responsibility (CoR) provisions of Australia’s heavy vehicle road safety laws, importers and exporters, and any intermediaries such as freight forwarders, have obligations to ensure that their actions (or inactions) do not contribute to a breach of the laws. This includes taking practical steps to ensure that cargo inside shipping containers is packed and restrained so as not to cause a breach of road laws when the containers are transported on a public road.

You can’t abrogate these legal responsibilities. Yes, heavy vehicle drivers and transport operators have the prime responsibility to ensure that heavy vehicles are not overloaded, and that cargo is adequately restrained (including inside shipping containers).

Particularly however in the case of an accident where a safety investigation is launched, importers, exporters, forwarders and others might well find themselves being prosecuted for failing to take reasonable steps to meet their CoR obligations. And, the penalties are now steep – for the most serious offences up to \$3m for Corporations, and up to \$300,000 and/or 5 years’ imprisonment for individuals.

They might not be widely reported in the mainstream media, or indeed not even necessarily in the trade media, but there are more road accidents and container logistics chain worker injuries attributable to poorly packed and restrained cargoes inside shipping containers than you might imagine.

Just recently in January this year, a worker died in Victoria after a stack of 3.6-tonne panels fell on him as they were being unloaded from a shipping container. Likewise, in 2019 there were several truck rollovers in NSW, Victoria and elsewhere, where a significant contributing factor was likely to have





been load-shift within the shipping container.

Don't forget the commercial losses that can be suffered either. One of the largest marine insurers in the World, TT Club, reports that 55% of containerised cargo claims are caused by poorly or unsecured loads, 12% from mis-declared dangerous cargo, and 8% due to overloading.

To raise the awareness of the vital need for safe container loading practices, Container Transport Alliance Australia (CTAA), in conjunction with Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA), have received Australian Commonwealth funding, through the National Heavy Vehicle Regulator (NHVR), to develop and



deliver learning and awareness building tools.

There are existing best practice guidance materials that should be better known and utilised. These include the Australian Load Restraint Guide, the International Code of Practice for Packing of Cargo

Transport Units (known as the CTU Code), as well as the International and Australian Dangerous Goods Codes.

The **CTAA / FTA / APSA Safe Container Loading Practices campaign** will include online learning materials (being developed in conjunction with the **WiseTech Global Academy**), and checklists for importers & exporters. **Awareness seminars are planned to be rolled out mid-2020 in all of Australia's capital city container ports, and in selected strategic regional hubs.**

The aims are to promote best practice, to raise awareness of the risks in the supply chain from poorly loaded and poorly restrained cargoes inside shipping containers, and to ensure that all parties in the chain fully appreciate their legal responsibilities towards safety.



Global Markets and the Impact on Currencies in 2020

By PAUL BETTANY, Collinson FX

Introduction

The 2019 year was one of record highs on global equity markets and has seen the massive expansion of Central Bank balance sheets, while interest rates were reduced to record lows. The Quantitative Easing (QE) narrative was dominant in Asia, Europe and North America. The Central Bank action was driven by persistent and anaemic growth levels within national economies. The 'Brexit' crises were resolved by the UK's 'Brexit Election' and now trade negotiations will dominate 2020 for UK and Europe. The year was highlighted by trade wars, as was 2018, but settlements and agreements are being achieved. Confidence and certainty are now driving sentiment and allowing a US economic boom to spark global growth prospects. There has been a serious caveat on the economic boom, in the form of a possible major 'black swan' event, which may have arrived in the form of the 'Coronavirus'.

Outlook for 2020 and a possible 'Black Swan' event

Markets have been suffering a major crises, that may yet be classified as a 'Black Swan' event, the 'Coronavirus'. This has all the characteristics of a catastrophic episode, which may yet become a pandemic, of global proportions. At the time of writing markets remain calm, as confidence that this epidemic is contained to Mainland China, with only a few international cases suggesting authorities are in control of the situation. Treatment is likely forthcoming and travel restrictions should contain the global threat, with the backstop being Mother Nature. It is thought that the rising spring temperatures will destroy the mutating virus. It is more about the impact on China and their GDP growth and the fallout on the existing global supply chain.

The markets began the year strongly, with equities testing record highs, boosted by global trade prospects. Markets were thrown into a period of uncertainty, by the re-alignment of global trade networks and practices, compliments of the disrupter-in-Chief, President Trump. Trump was determined to rewrite multi-national trade accords, between the US and her major trading partners, by employing bi-lateral trade agreements with reciprocal, fair and balanced trade. This sent the orthodox status quo of global trade arrangements and existing supply chains, into utter turmoil. The uncertainty of this upheaval pushed markets into panic-mode and hampered economic trade, thus growth. President Trump has weathered the storm and the new trade agreements are coming to fruition thereby restoring confidence to global markets. The US has successfully renegotiated

new agreements with China, Mexico, Canada, Japan, South Korea and others, which include all their major trading partners.

The turmoil and disruption that has been the 'Brexit' fiasco has been causing mayhem in British and European markets for more than three years, since the 'Brexit' referendum and brought down two British Prime Ministers. This was resolved by a 'Brexit Election' at the end of 2019, resulting in a landslide victory for the Pro-Brexit Tories, led by Boris Johnson. This has unshackled the UK economy, from the heavily regulated and controlled EU and provided the mouth-watering prospect of new global trade agreements with the British Government. High on the list for new agreements will be the US and Commonwealth nations. These will provide exciting prospects for the UK and other key trading nations (including Australia), as it looks to re-establish its past role as a leading global trading nation.

The EU trade agreement is also yet to be negotiated and may prove to be more difficult than the US and Commonwealth nations. The EU are reluctant to negotiate a mutually beneficial trade agreement, despite the trade balance favouring the Europeans, as they want to send a message to other EU members who may be considering leaving the Political Union. This will remain a bone of contention, throughout the year, as Johnson has set the deadline for December 2020. The Europeans need this trade agreement, as they have a massive trade surplus with the UK, but political motives provide serious obstacles. The EU will lose a massive part of their budget, when the UK completely severs their political partnership and this hole will be impossible to fill. The EU already have





massive budget challenges, as member nations slide into economic recession and Brexit will only add to their woes.

Central Banks and Monetary Policy

Central Banks across the world are operating at historically low interest rate levels and record high liquidity, in the form of QE. Monetary stimulus has been key to improving global growth prospects, but this may be a year of status quo, as options dry up. The Federal Reserve has already indicated that rates will remain steady, unless required, while the ECB and Bank of Japan are already in negative territory, leaving few alternatives. The Bank of England will have a big year as the results of the 'Brexit' become more clear, but growth expectations should remain high. The RBA holds at historically low levels, in terms of interest rates, but the stubbornly low growth rate and the recent bush fires may encourage further rate cuts and/or further QE. US interest rates are trading at a big premium to their major trading partners and their associated currencies will reflect the attractive rate of return on the USD, which should mean a serious appreciation over the 2020 year.

The AUD started the year towards the bottom of their historical cyclical trading range, well below 0.7000 and heading towards the 2008 GFC lows. Low Australian interest rates, risk factors and the US interest rate premiums, promise the currency may yet go lower. Cross currencies offer different possible outcomes, as other major currencies operate at a negative discount on interest rates, offering some stability and even the

prospect of currency gains. The GBP is likely to generate much interest over the coming year and should attract a lot of upside.

Global Geo-Politics

The biggest foreseeable event on the Geo-Political stage in 2020 is the US Presidential elections, although this does not occur until November, it will still dominate headlines for much of the year. President Trump is always in the spotlight, changing the narrative and driving economic prosperity with low taxes and deregulation. The Trump 'trade policy; is starting to come to fruition and the bilateral nature of the agreements, will prevail. The most exciting prospects may come from the UK trade deals with the rest of the world, after being released from the insular EU and promising much.

The UK was the great trading nation of the world for many years and would love to regain a semblance of that previously held, lofty status. High on the priority list will be the USA and Commonwealth Nations targeted for trade deals. Australia will benefit greatly from such trade agreements. These two top ten economies compliment each other well and have many commonalities from the 'Empire' days.

Summary

The coming year promises to be one of strong US led global growth, as trade deals are implemented and benefits flow. Low interest rates, around the world, allow for lower cost for funding of investment and debt, which will encourage growth. Record high debt

levels remain an increasing problem, in both the developed and emerging economies, that have partially been disguised by the record low funding costs. The US Presidential elections and the UK post-Brexit trade negotiations will drive global trade narratives, along with EU trade negotiations with the UK and USA. Markets must always be ready for the possibility of unpredictable 'black swan' events. Foreign Exchange risk management is key to trade exposed companies and using foreign currency cash flow projections and widely available hedging mechanisms will mitigate these risks.

“ *Markets have been suffering a major crises, that may yet be classified as a 'Black Swan' event, the 'Coronavirus'* ”





WiseTech Global acquisition of leading logistics solutions provider in Switzerland, SISA Studio Informatica SA

Global logistics solutions group, WiseTech Global, today announced the acquisition of SISA Studio Informatica SA (SISA), a leading customs and freight forwarding solutions provider in Switzerland.

Headquartered in Lugano, SISA is a Swiss market leader in providing customs and logistics solutions including customs clearance, freight forwarding and bonded warehouse management. SISA's customers include DHL Logistics (Schweiz) AG, Fiege Logistik (Schweiz) AG, FedEx, Post CH AG, Agility Logistics AG, F. Hoffmann-La Roche AG, and many other exporters, freight forwarders, and logistics service providers.

WiseTech Global Founder and CEO, Richard White, said "For over 40 years, SISA has accumulated a powerful breadth and depth of expertise across the customs and logistics landscape in Switzerland that will enhance our global customs and localisation capability and further strengthen our solutions for logistics providers throughout Europe. We are pleased to welcome the talented SISA team and operations into our WiseTech family, taking a further important step in building out our global customs footprint."

"With Switzerland the ninth largest economy by GDP in Europe, the third largest trading partner with the EU for exports of goods and the fourth largest trading partner with the EU for imports of goods (1), bringing SISA into the WiseTech group now, consolidates our considerable geographic foothold in



Richard White, CEO of WiseTech Global



Roger Zingg, Chief Services Officer of SISA; Roland Schumacher, Managing Director of SISA; Remo Martinelli, Chief Financial Officer of SISA

customs clearance and border compliance. Combined with our relentless investment in innovation and expansion of our CargoWise One platform, together we will continue to provide solutions to our customers that will enable greater control over international compliance and achieve lower-risk cross-border execution in the changing European and global trade landscape."

Roland Schumacher, Managing Director of SISA, said "We are delighted to join the WiseTech Global group as this will enable us to bring even more innovation to SISA's leading Swiss customs clearance solution. The leading position of WiseTech's solutions in global customs clearance will bring vast advantages for international-oriented Swiss freight forwarders and shippers. We stay committed to our long-standing customers and to helping them remain successful in the highly competitive logistics market."

Remaining under the leadership of Managing Director, Roland Schumacher, SISA's operations will be integrated within the WiseTech Global group and SISA will continue to deliver their logistics solutions directly to their customers, along with CargoWise One over time.

CargoWise One global platform enables logistics service providers to execute highly complex transactions in areas such as freight forwarding, customs clearance, warehousing, shipping, tracking, land transport, ecommerce, and cross-border compliance and to manage their operations on one database across multiple users, functions, countries, languages and currencies.

This transaction follows WiseTech's other recent logistics solutions acquisitions in Argentina, Australasia, Belgium, Brazil, Canada, France, Germany, Ireland, Italy, the Netherlands, North America, Norway, South Korea, Spain, Sweden, Taiwan, Turkey, the UK and Uruguay, and is in line with WiseTech Global's clearly stated strategy of accelerating long-term organic growth through targeted, valuable acquisitions.

(1) Statistics Times, List of European countries by GDP (nominal) (2018); Eurostat (2018)

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TELEX RELEASES

9 Things You Need To Know

By JAMES COTIS, Principal – Logical Insurance Brokers

Q1. What is meant by a Telex Release?

A. The process of a 'telex release' is as follows:

- The shipper, after having received the carrier's bill of lading, does not - after receipt of payment - post the bill to the consignee or otherwise trade it, but, requesting 'telex release', returns all bill of lading originals to the carrier (typically, but not necessarily, at the port of loading);
- The carrier then instructs his agent (or branch office) at the place of delivery to effect delivery to the party which the shipper designated in his instructions to the carrier as consignee;
- The returned bills of lading can be stamped 'surrendered' or 'telex release' (to render the original bills of lading null and void) and can then be filed. Note that these should not be sent to the carrier's agent who releases the goods.

Q2. Who receives Telex Release requests?

A. It is often thought that only shipping lines and ship agents receive 'telex release' requests, however, freight forwarders also receive these requests, either with respect to their own house bills of lading or

when acting as correspondent for another forwarder.

Q3. What is the difference between a Telex Release and Switch Bill of Lading?

A. A 'telex release' differs from the 'switch bill of lading' procedure, where the original set of bills of lading are surrendered to the carrier in exchange for a new set of bills in which some of the details have been changed. Carriers typically transmitted these 'telex release' instructions to their agent by email, and now an increasing number of carriers communicate 'telex release' instructions by using their internal computer systems, which allows their offices to view this information in real time.

In a variation of the 'telex release' process, the carrier prints the bill of lading but never actually hands it over to the shipper. Once the shipper has received payment, he/she authorises the carrier to release the goods to the consignee. If the carrier agrees to this process, he/she must ensure that the terms and conditions both on the front and back of the bill of lading are validly incorporated into the carriage contract.

In more recent developments, we are seeing circumstances where the 'bill of lading' is never actually printed but stored in the

carrier's computer system. However, there is considerable debate as to whether such a virtual 'bill of lading' would still be deemed a bill of lading (or similar document of title) under carriage conventions or domestic laws. Again, the carrier must find a way that ensures valid incorporation of the terms and conditions and actually printing a bill might be the only way.

Q4. Why do parties use a Telex Release?

A. In other words, why do parties have a bill of lading issued and then return it to the carrier (usually) at the place of receipt? The main reason appears to be that a number of countries (for instance in the Far East) do not recognise sea waybills for some commercial dealings or that sea waybills are not customary to certain trades. 'Telex release' has in common with sea waybills the fact that the risks in connection with posting bill of lading originals are avoided.

Q5. What are some of the Pitfalls of a Telex Release?

A. When we ask specialist logistics insurers this question, they invariably identify the two main issues as being:

(1) The email message by the carrier to his/her agent is worded and dealt with carelessly.

For example, one insurer noted that the carrier wrote 'Shipper has confirmed COD charges and bills are now surrendered. Please kindly go ahead, Thanks'. The carrier's 'go ahead' simply meant that the cargo should be shipped to a different destination, but his agent mistook it as instruction to release the goods.

(2) Email fraud.

Fraudsters attempt to trick an unsuspecting carrier's agent into releasing the cargo to an accomplice by emails which give the appearance of having come from the carrier. Therefore, it is essential that the carrier's agent does not accept the 'telex release' email at face value. The agent must verify, before releasing the goods, that the 'telex release' email, which purports to come from the carrier, is actually authentic. If the agent



is authorised to establish the authenticity of the carrier's 'telex release' email by responding via email, this will be completely insufficient, because the agent is really communicating with the fraudster.

Q6. How do I reduce my risk of email fraud?

A. The agent should respond to the purported 'telex release' by finding, checking and using the carrier's genuine email address. The 'telex release' should be copied into the email to the carrier who should be asked to confirm that the 'telex release' message originated from him/her.

If the carrier communicates the 'telex release' request to the agent through their internal computer system, procedures should define which party has to enter new information. For example, an insurer noted an instance where a shipper requested 'telex release', which was duly entered in the computer system, but when the shipper later cancelled his/her instruction, no further entry was made, with the result that the agent released cargo worth c. USD 450,000.

Q7. Is there a checklist/set of instructions that the carrier should send to his/her agent to validate the Telex Release?

A. Over the years, those insurers providing Errors and Omissions insurance (also known as Professional Indemnity insurance) for logistics industry participants have been involved with numerous claims. As a result of these claims, insurers have developed useful checklists and guidance where they recommend, for example, that the carrier ('third country receiving agent') send clear instructions to his/her agent ('releasing agent') which should include the following points:

1. Confirmation that the full set of original bills of lading, properly endorsed in case of 'order' bills, have been surrendered and that the goods can be released;
2. Confirmation that all charges (such as freight and other charges payable at the load port) have been collected;
3. Full details of the cargo to be released (i.e. BL number, date and place of issue, container number and cargo details); and full name, style, address, telephone, fax and e-mail address of the consignee (or endorsee in case of an 'order' bill) to whom the goods should be released;
4. Maintain definite & tight procedures and make sure the relevant staff members are familiar with them;

5. The carrier or forwarders must insist that the shipper returns all original bills of lading;

6. Arrange a letter of indemnity form. We understand that the larger shipping lines have developed such forms;

7. Consider using a 'telex release' letter of indemnity, in addition to the standard contents of a letter of indemnity.

Q8. How do I issue a Telex Release Request?

Telex Release clearly carries additional risks. Carriers should therefore only consent to a 'telex release' request, if the shipper is prepared to sign the carrier's specific 'telex release'.

A telex release request should include the following:

- The location of where the full set of bill of lading originals must be surrendered to the carrier;
- Requires surrender of the full set of bill of lading originals (in the case of an 'order' bill, duly endorsed);
- Caters also for situations where the shipper changes or revokes the 'telex release' request;
- Is backed up by a 'guarantee' by a first-class bank, if there are any doubts about the shipper's credit standing;
- If the bill of lading is never issued, confirmation that the bill of lading terms and conditions are validly incorporated.

Q9. Is there anything else I need to know about Telex Release?

- It is a process and never by itself an instruction to release cargo without presentation of a bill of lading.
- It always concerns bills of lading, never sea waybills.
- It is incorrect to say that a 'telex release bill of lading' (presumably a bill of lading which is surrendered back to the carrier under the 'telex release' process) and an 'express bill of lading' (a sea waybill) are the same thing.
- In principle, the carrier has no legal obligation to substitute the 'telex release' process for the ordinary process of delivery against presentation of an original bill of lading. However, carriers are ordinarily happy to comply with the shipper's 'telex release' request, which they see as good customer service and a chance to charge the shipper a small fee.

Please note that whilst quality logistics liability insurance policies generally provide cover in respect of goods released in error (exceptions apply when done recklessly or intentionally) some policies exclude cover for mis-release of cargo.

Therefore, we urge readers to either carefully read their policy wording or check with their insurers to ascertain if the policy will respond to these circumstances.

“ Over the years, those insurers providing Errors and Omissions insurance (also known as Professional Indemnity insurance) for logistics industry participants have been involved with numerous claims. ”



Who we are:

James and the team at Logical Insurance Brokers provide specialist risk management and insurance solutions to the logistics industry. Logical is delighted to be associated with the Freight and Trade Alliance (FTA) and is proud to be their appointed insurance adviser since its inception in 2012. James is also a regular presenter at FTA professional development events.

If you would like more information about how a carefully constructed insurance program can help protect your business, please feel free to contact James on 02 9328-3322, email jamesc@FTAlliance.com.au or visit the Logical Insurance Brokers website at www.logicalinsurance.com.au/logistics.

Disclaimer: This article is designed to provide helpful general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you.



Digital freight sales move from concept to logistics mainstream

By JON CHARLES, co-founder and Managing Director - Mizzen Group
(jcharles@mizzenit.com)

If you think selling freight digitally is still a concept for the future, you're already behind.

In 2019, digital sales became integrated into the standard business model and strategies of Hapag-Lloyd, Maersk and the CMA CGM Group.

Meanwhile, freight forwarders such as Kuehne + Nagel, Toll and DHL implemented or prepared to launch a true digital freight experience.

This transition to digital creates huge opportunities for improved profitability driven by dynamic and attributes-based pricing.



But its clear companies need to act fast if they're going to secure a foothold in the changing landscape.

A fast-growing segment

The Journal of Commerce has estimated digital solutions to reach 15 percent of container volumes or approximately 30 million TEU transacted online by 2023.

Indeed, significant numbers of early digital adopters have already started to procure and book their freight digitally.

In 2018 Hapag Lloyd didn't have an instant quote capability from their homepage. They launched Quick Quotes in the second half of that year and by 2019 reported that nine per cent of container volumes were being procured online.

Maersk launched Maersk Spot last year, rapidly growing from zero to a 12 per cent share of their spot market volumes - all delivered with customer-focused booking guarantees and two-way commitments.

Some of the larger freight forwarding companies have started to build strong digital capabilities and launch their own products.

Kuehne + Nagel's Pledge product is focused on improving booking certainty outcomes with lead time and 100 per cent money-back guarantees.

Toll Global Forwarding is also working on creating digitally focused customer solutions, working closely with the Kontainers' team to fast track their digital offerings.

Change is inevitable

Digitalisation creates opportunities but also creates new threats as the Boston Consulting Group highlight in their paper *The Digital Imperative in Container Shipping*.

For a freight forwarder they now have to compete not only with other freight forwarders for new business opportunities from contestable cargo, but also from four new fronts.

1. Shipping lines that are going digital and able to service the market beyond the wharf and offer a complete end-to-end supply-chain solution to direct shippers.
2. The growth of online marketplaces that connect direct shippers to logistics service providers.
3. "Born digital" freight forwarders, the most prominent of which are extremely well funded by venture capital. The front end may give a great user experience, but critics state service levels can be impacted by a lack of on-the-ground operational resources.
4. Incumbent freight forwarders are going digital. There are a number of multinational and local entities that are building or buying a digital customer-facing solution to overlay on their existing physical operations and therefore overcoming the perceived limitations of a "born digital freight forwarder".

The common underlying proposition of all four is that via their digital solution, they can service a direct shipper

customer better and at a lower cost than the traditional freight forwarder model.

A true digital sales experience

Most of the software solutions in the market today focus on bringing efficiency to the current business process rather than using technology to create new business models.

But customers today have digital expectations set by their use of online banking, shopping, flying and more from their mobile phone.

To succeed in the future, shipping technology needs to learn from 25 years of digital disruption in other industries and choose a model centred on the customer experience.

Creating a credible and profitable digital experience is not just about buying software, it is about creating new processes in your business, finding staff with the relevant skills and giving them time to create the capability to service your customer 24/7 from your digital shop front.

Digital Sales Traction (2019 and beyond)

Who	Online numbers
Hapag Lloyd	9% of total liftings sold online, 15% target by 2023 (Quick Quotes)
Maersk	12% of total Maersk spot cargo in 2019 (Maersk Spot)
Cogoport	300k from FY18-FY19
NYSHEX	82k TEU in FY19, 428k TEU target in 2020
Kontainers	710k bookings in 2019, 1m+ target for 2020

Source: SeaIntelligence Consulting
<https://view6.workcast.net/ControlUsher.aspx?cpak=2892910641524871&pak=3987799459231743>

The upside is improved profitability driven by dynamic and attributes-based pricing. For the early movers this is a competitive advantage and differentiator; it will give them an early lead which they should be able to exploit in the short to medium term.

Your business must have a transformation strategy if you want to have access to the digital customer.

Often it's only in hindsight that we can see the full impacts of change. The businesses who take action in 2020 will reap the digital logistics rewards.

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A Technology Swiss Pickle – Freight Forwarder’s Reliance on Standard Terms

By MAURICE LYNCH, Special Counsel | Insurance, Transport & Trade – Mills Oakley

Most freight forwarders have standard terms and conditions. Whether a freight forwarder can rely upon these standard terms and conditions as a defence in disputes depends upon:

- whether they have been incorporated into the contract in question; and
- whether they have been sufficiently drafted.

There has been much commentary on the decision in *Technology Swiss Pty Ltd v Famous Pacific Shipping (Vic) Pty Ltd* [2019] VCC 1542 in respect of its conclusion that even if standard terms and conditions have not been provided to a customer they can be incorporated into a contractual relationship with a customer if there is an email footer on the freight forwarder’s emails stating:

- all of the freight forwarder’s business is transacted subject to standard terms and conditions which are available on request; and

- in certain circumstances the terms exclude the freight forwarder’s liability and include indemnities for its benefit.

Contrary to some recent articles written about this case, there is no new law in the decision and it merely follows the established principles of Australian law regarding the incorporation of standard terms and conditions and the subsequent interpretation of those terms.

Although some commentaries have suggested that email footers can be used to incorporate standard terms and conditions into contracts, the effect of the decision cannot be put so highly.

It is misleading to suggest that email footers can incorporate a freight forwarder’s standard terms and conditions. This is because the *Technology Swiss* decision from a lower court (the County Court) which still follows the leading Australian Court of Appeal and High Court decisions on this issue. These decisions state that for a party to show that its standard terms are incorporated into a contract, it must show that it did all that was reasonable in the circumstances of the case to bring the terms to the attention of the other party. This is a question of fact in the circumstances of the case having regard to all of the circumstances of the parties.

Generally, following authority from the New South Wales Court of Appeal, a reference to terms and conditions being available on request in an email footer (as was the case in the *Technology Swiss* decision) is not sufficient to incorporate a party’s standard terms and conditions. This is because it leaves one party who is burdened by the terms the task of finding out what those conditions are and what they state.

However, in the decision in *Technology Swiss*, the email footer was, having regard to all the circumstances of the parties, able to incorporate the standard terms and conditions of Famous Pacific Shipping. This was due to the following:

- Famous Pacific Shipping had sent an email to *Technology Swiss* providing a quotation for its services which stated that the quotation included “FPS Standard terms and conditions”. This quotation was accepted by an email from *Technology Swiss* to Famous Pacific Shipping. That acceptance, despite a copy of the terms and conditions not being provided, was alone sufficient to incorporate Famous Pacific’s standard terms pursuant to authority in the Victoria Court of Appeal. In other words, the issue of the impact of the footer was not decided by the Court because the terms had already been incorporated into the contract by email correspondence; and

- The footer in the email, in addition to stating the terms and conditions were available on request, also stated that in certain circumstances the terms “exclude the Company’s liability and include indemnities which benefit the Company”. This statement clearly put the freight forwarder’s customer on notice that terms changed the common law rights of the parties.

Although the terms of the freight forwarder were incorporated into the contract for freight forwarding in question, the freight forwarder was found not to be able to rely upon the limitation clause in those terms. This was due to the manner in which the clause was drafted which meant that where there was a commercial invoice for the damaged goods in question, the basis of liability for the claim was not



a limitation amount but the commercial invoice value of the damaged goods.

Importantly, the decision in *Technology Swiss* should not be considered authority for the position that email footers can be used to incorporate a freight forwarder's standard terms and conditions. Rather it is a timely reminder that a freight forwarder must do all that was reasonable in the circumstances of the case to bring the terms to the attention of the other party. Email footers cannot be the principle means by which terms are to be incorporated into a contract. Freight forwarders should still incorporate their terms by doing the following:

- providing a copy of their standard terms and conditions to its customer, and obtaining a signed acceptance from its customers (through a credit application or other document such as a signed quotation) which states the customer has read the terms and understands that they apply to all services performed by the freight forwarder; or

“ *It is misleading to suggest that email footers can incorporate a freight forwarders standard terms and conditions* ”

- where there is no signed acceptance of terms, have email correspondence with the client regarding a contract which states that the contract is subject to the freight forwarders standard terms and conditions which apply to all services, and have a response from the customer to that email which accepts that position.

Email footers at best can only assist in “bullet proofing” the incorporation of standard terms and conditions. If they are used they should:

- state the freight forwarder's standard terms and conditions apply to all services it provides;
- state the freight forwarder's standard terms and conditions in certain circumstances exclude or limit the freight forwarder's liability and include indemnities in its favour; and
- contain a hyperlink to the freight forwarder's terms and conditions on its website.

Although the terms of the freight forwarder in the *Technology Swiss* decision were found to be incorporated, they could not be relied upon to exclude liability because they had been poorly drafted. Accordingly, the decision is a reminder a freight forwarder must have terms and conditions that are appropriately drafted for their operations.



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JJ Lawson – 45 years of trusted trading

This year, JJ Lawson celebrate 45 years in business. As one of the longest-established family owned & operated customs brokers and freight forwarders in Australia, the Lawson family know that the key to success is trust.

Back in the 1970s when Jim Lawson founded JJ Lawson, he had to take his clearance forms to Customs House in Circular Quay in person, to get them stamped by an Australian Customs official.

“It’s mostly electronic now of course,” says Jim, “but you still need a lot of expertise, and controlling the delivery until it’s in the customer’s hands is critical.”

It was this need for greater control that convinced Jim he needed to enter the delivery side of the business.

“We were relying on subcontractors for transport, and we realised that it didn’t matter how well we did our job if we could be let down by the contractor not delivering on time. The delivery is what the client sees, not what we do in the background.”

To reduce his reliance on others, Jim bought his first truck, and the company grew from there. In the years since, his sons Greg & Marty have worked under his leadership and have now taken over the business.

“Dad started out with one truck,” says Greg, “now we’ve got a fleet of 26 heavy vehicles. I’m not sure he saw that coming.”

Greg says that recognising how important their role is in the chain of responsibility has turned out to be key to the company’s success.

“Having our own fleet puts us completely in control of the process from start to finish,” says Greg, “and our customers appreciate our ability to handle all aspects of the job.”

While Greg manages the transport and logistics, his brother Marty is in charge of the customs and freight-forwarding side of the business.

“We have a full-time compliance team and we’re very focussed on risk management and safety right across the business,” says Marty, “and this year we achieved Trusted Trader accreditation in both businesses.”

This makes JJ Lawson Transport the first standalone transport business to

achieve this in Australia, adding to their accreditation with TruckSafe. JJ Lawson are also experienced in Dangerous Goods Management and operate under the National Heavy Vehicle Regulator in Mass, Maintenance & Fatigue.

This attention to compliance pays off, with other brokers and freight forwarders utilising JJ Lawson for their transport services.

“When people in the same business see you as a reliable and safe transporter, I guess that’s a sign you’re doing something right,” says Greg, “we’ve gone to great lengths to document our processes and make sure our people follow them. Anything we can do to improve the safety of our people and the goods we’re moving is well worth it.”

In 2019 JJ Lawson updated their fleet with seven new Mack Granite prime movers. Safety, reliability and after-sales service keeps them loyal to the Mack brand. The Granites have integrated safety systems and meet current environmental standards with Euro 5 compliant engines.

“Whether we’re carrying cosmetics or scrap steel, we treat our customers’ cargo like delicate china,” says Greg, “and these safety features go a long way to ensuring everything arrives the way it was when we took delivery.”

“We’ve introduced a couple of A-Double combinations so we can move two 40-foot containers with heavier weights under the HML guidelines,” says Greg, “it’s a productivity booster, but obtaining route approval for these vehicles in Sydney can be a challenge.”

The company’s focus on safety was recognised in 2018, when JJ Lawson received the Trucksafe John Kelly Memorial Award. The award is given to members who have successfully implemented the Trucksafe programme and demonstrated integrity and ethical behaviour in trucking.

“We don’t believe in cutting corners to save money,” says Greg, “the welfare of our staff and other road users is paramount. This award was a welcome acknowledgement of our efforts.”

To celebrate their 45th anniversary, Greg took the opportunity to have one of the new trucks decked out in a special commemorative livery.

“We’re big supporters of the North Sydney Bears,” says Greg, “and with our standard fleet decked out in red with black stripes and the Bears logo, I asked Mack to reverse the colours on one of the new trucks. We’ve had a lot of positive feedback on the black finish, it’s a really striking-looking truck.”

JJ Lawson has grown organically over the decades and Greg says this comes down to their attitude of customer service.



Marty Lawson, Customs and Freight General Manager – Greg Lawson, Transport General Manager – Rob Vozzo, Transport Operations Manager – JJ Lawson Group

JJ Lawson Quick Facts

Founded in	1975
Based in	Mascot NSW - Customs Freight Chipping Norton NSW – Transport Warehousing (20,000sqm facility) 12% of total Maersk spot cargo in 2019 (Maersk Spot)
Fleet size	26 trucks
No. of staff	80

“We’re not the cheapest carrier in a pretty tough market,” he says, “but our clients know we’re 100% reliable. We retain our staff, and we’re service-conscious. That old-school loyalty is definitely a factor in getting us to where we are today.”

In an industry where drivers are in short supply, the company’s Transport Operations Manager, Robert Vozzo, has been working on ways to improve recruitment and retention of young drivers. Robert was nominated and accepted into the 2020 Daimler Future Leaders Forum. And has been invited to present on driver recruitment

and retention at the 2020 Trucking Australia conference.

“It’s a great honour for us to have Robert represent us and Road Freight NSW at this forum,” says Greg, “and it’s a well-deserved recognition of the work he’s been doing. Moving goods safely needs skilled drivers, and getting younger drivers into the business is something we’re concentrating on.”

JJ Lawson are a family business that has succeeded through hard work, and by recognising that customers are looking for trusted, reliable partners who can take responsibility for the entire operation.

“Some of our people have been with us for 30 years or more,” says Jim, “and that continuity makes a difference. We can’t always perform miracles, but our customers know we’re working in their best interests, and they can rely on us.”

Like all true believers, Jim still reckons his beloved Bears have a chance at the NRL grand final.

“My wife says I’m delusional, because the last time they were finalists was in 1922, but you’ve got to put your trust in someone.”

Companies importing and exporting goods to and from Sydney know they have someone they can trust: JJ Lawson.



Interview

Margaret Featherstone, Director Sales & Commercial Business – DSV Air & Sea

Paul Zalai, Director FTA, speaks to Margaret Featherstone on DSV's recent acquisitions and the current trade environment

1. Paul Zalai – Margaret, can you step us through the evolution of DSV and its acquisition trail over the last two decades?

DSV was established in 1976 by 9 independent hauliers and by 1989 had acquired several Danish competitors. From 1997 onwards, we saw the acquisition of Samson Transport, DFDS Transport Group, Frans Maas, ABX Logistics and UTi Worldwide, with the most recent being the acquisition of Panalpina in 2019.

In addition to its acquisition trail, DSV has built business through a focused sales strategy. Swiftly growing into a leading top four global logistics company.

Locally – here in Australia, DSV began as Container & General Forwarding (C&GF) in 1981 and was purchased by JH Bachmann in 1997. This company was acquired by DFDS Transport in 2005 and two years later, became known as DSV Air & Sea. DSV Australia operates a very successful business under the DSV Air & Sea and DSV Solutions banner.

2. Paul Zalai - What have been some of the challenges in integrating a powerhouse the size of Panalpina and how have they been addressed in an Australian context?

As illustrated through our history, DSV has a long track record of successful Mergers and Acquisitions (M&A). Each M&A has provided us with some invaluable learnings – which has better prepared us for the next one.

DSV and Panalpina were similar in many ways therefore complementing each other. Rolling out new operating systems, IT solutions and relocation of facilities is always a challenge however the integration has been seamless for all involved. The key to any merger is communication and I think we have done this extremely well this time with our employees, customers and suppliers.

3. Paul Zalai - Trade has been adversely impacted at the start of this year with the coronavirus causing significant disruption to supply chains, how do you see the outlook for the rest of the year?

Due to the diversity of the DSV business, the impact of the Novel Coronavirus has not been as influential compared to our competitors. The outlook for the remainder of the year will pose its own challenges as there will be much catching up to be done, by manufacturers and logistics service providers.

Our China offices and operations are back up and running with the demand of shipping services expected to increase dramatically and exceed supply. This will also no doubt see a significant increase in air and sea freight costs.

4. Paul Zalai - What services do you offer customers across the region?

We offer full door to door supply chain solutions. This includes air and sea services, warehousing and distribution solutions, cross-docking, transport, vendor management, purchase order management, single point account management and customer service.

5. Paul Zalai - Do you have specialist areas of focus?

Whilst we service a full range of cargo / industries our specialist areas could be identified as project cargo, pharmaceutical, auto, retail, mining and consumer goods.

6. Paul Zalai - How do you manage to implement strategic partnerships with major exporters and importers?

DSV offers flexible solutions by working in conjunction with our customers to find beneficial solutions whilst ensuring implementation plans, and accounts are managed closely. Our aim is to build

relationships across all stakeholders and areas of the business from Directors to Operational staff.

7. Paul Zalai - What is your focus in terms of corporate responsibility activities?

As a significant, global player in the transport and logistics industry, our business activities have an impact on the world around us - DSV has several Corporate Social Responsibility (CSR) initiatives centred around: the environment, business ethics, people and suppliers.

Locally we have been working with the Red Cross providing international humanitarian aid; logistics services and financial support. We have also (where possible) retrofitted our buildings to more energy efficient lighting as well as sourced suppliers that share the same CSR values.

8. Paul Zalai - How do you plan to further expand market share in Australia?

We will be using our competitive advantage bought about by the Panalpina acquisition. Our sales strategy that has been rolled out across businesses in Australia is centred around, leveraging our newly acquired volumes and product offerings. It also involves expanding and developing our products across the region. And as always, we are investing in our people to make sure they remain highly skilled and dedicated to finding the best solutions for our customers.

9. Paul Zalai - What do you see as the main threats and opportunities of doing business in Australia?

Our main constraints are time and cost – which is attributed to our geographical location.

The current uncertainty in the China market can pose a threat to customers but at the same time it can create an opportunity as other origin countries for manufacturing may be looked at.

Opportunities also exist in the development of new products to penetrate evolving markets.

Recent bushfires, flooding and of course the Coronavirus outbreak, all influence industry, the economy and the cost of logistics in Australia.

Increased workload for Australian Border Force and Biosecurity officers with longer processing times is a challenge. However, DSV as a Trusted Trader works closely with customers to gain their accreditation which leads to numerous benefits and exemptions from customs and quarantine obligations.



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WISTA Australia has recently launched its WISTA Australia Mentoring Program, with 24 mentors and 21 mentees. Each mentee has received at least one experienced industry mentor. The WISTA executive committee hopes that participants will develop a strong connection that allows learning and growth and extends the mentees knowledge and network. WISTA is proud to offer the program free of



WISTA Victoria started 2020 by hosting a dinner for WISTA Singapore President Magdalene Chew at The Bank and to celebrate the start of the WISTA Australia mentoring program



Signing of the MOU between IMO and WISTA

charge to current and continuing WISTA members. We have been impressed with the quality of our mentors (both female and male) who come from a range of shipping and trade backgrounds. We look forward to supporting our members by providing this program into the future. With valued input from participants we will continue to develop the program to ensure real outcomes are achieved.

The IMO theme 2019 “Empowering Women in the Maritime Community” was dedicated to women in shipping. This provided the opportunity to promote diversity and inclusion in the maritime sector, as well as lay the groundwork for open discussion



SAVE THE DATE

WISTA AUSTRALIA APAC CONFERENCE

Melbourne, Australia

1 April MEGATRANS Conference & Networking Evening

2 April WISTA APAC Conference Port Tour

2 April MEGATRANS Gala Dinner

3 April Cultural Excursion Yarra Valley

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on how a diverse workforce will provide for a sustainable future. It has also made evident that more actions need to be taken to reach the goal of a truly diverse industry. Diversity, including gender diversity, is a responsibility for all and key to the sustainability of the maritime sector.

WISTA International having consultative status with the IMO, can formally contribute to the discussion for increasing capacity in the maritime industry, a critical component of which is promoting women in the industry, both shoreside and

shipboard, and also showcasing the varied technical skills and leadership that women bring to the industry. WISTA International is an active participant at the IMO's Technical Cooperation Committee and is playing an increasing role at other technical committees on maritime environmental protection and maritime safety, where applicable.

Mark your diaries!

WISTA Australia will be hosting the APAC Conference in Melbourne 1 – 3 April, 2020.



WISTA VICTORIA 2019 Christmas Celebration

Increase Emotional Intelligence (EQ) for Career Success

Thursday 18th June, 2020, 4.00pm–7.00pm | Novotel Sydney International Airport

Freight Trade Association (FTA) in association with World Class Teams are excited to present a dynamic and highly practical 2 hour workshop, followed by networking, for Transport and Logistics Professionals where you will discover:

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SAVE THE DATE

2020 Women In Logistics Forum

Thursday, 13 August 2020 @ Novotel Brighton Le-Sands - 12.00pm to 4.00pm
(date may change due to coronavirus)

Co-hosted by Freight & Trade Alliance & Women's International Shipping & Trading Association

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Do your staff, and more importantly your clients, understand the new Incoterms® 2020.

By JOHN PARK, Head of Business Operations - Freight & Trade Alliance (FTA)

Industry would be well aware by now that the International Commercial Terms (Incoterms) published by the International Chamber of Commerce (ICC) have been revised and resulted in the new Incoterms® 2020 coming into effect 1, January 2020.

During the later part of 2019 FTA were proud to work with the ACCI, BDO and Bob Ronai in having presentations made to industry around Australia on the new rules and changes that were to be implemented. However, one thing that was quite clear from discussions with forum participants was the lack of knowledge / awareness of these terms by many small – medium size importers / exporters.

It became apparent that it will fall to the logistics industry, freight forwarders and customs brokers, to ensure that their staff, both operational and sales, are fully aware of the new terms and are able to communicate these changes and the best delivery terms to be used to their clients.

To the that end FTA have worked closely with the Wise Tech Academy to develop a high quality e-Learning solution to support it's members in managing compliance with the new requirements - NOW AVAILABLE via www.ComplianceNetFTA.com.au at a cost of \$49.50 (incl GST). The course will also be accredited with 4.5 CPD points in Stream A for Customs Brokers wishing to maintain their CPD requirements.

Understanding Incoterms® 2020 will support members' learning of:

- the importance, the application and limitations of Incoterms® 2020 in international transactions;
- the apportionment of costs, responsibilities, duties and obligations of contracting parties against each of the eleven Incoterms® 2020 options; and
- the transfer of risk and delivery points of each of the eleven Incoterms® 2020 options.

The author of the *Understanding Incoterms 2020* course is Roberto


Bergami, a former senior lecturer in International Trade at Victoria University, Melbourne and currently Assistant Professor at the University of South Bohemia in the Czech Republic. Roberto was also appointed as a member of the ICC Australia Incoterms® 2020 Committee and hence played a part in the development of the changes to the rules.

His research interests include methods of payment in International Trade, market access, Customs and permit agencies as well as a special interest in terms of delivery. The latter terms are defined through the International Chamber of Commerce Incoterms® Rules.

The course will be structured across 12 modules and will address all 11 delivery terms as well as the rules and structure of Incoterms® 2020.

Are you're a CargoWise One user?

FTA are also pleased to advise that WiseTech Global will provide this course FREE to all CargoWise One users. Users can access the course, by clicking on the WiseTech Academy icon on their MyAccount page which can be accessed directly from the CargoWise One Help Menu

( which you can find at the bottom of the opening screen).



Author of the *Understanding Incoterms® 2020* course Roberto Bergami

WiseTechAcademy

Be Aware - Incoterms® 2020 Review

By JOHN THOMSON, Senior Claims Executive - Thomas Miller (Australasia) Pty Ltd

“Incoterms® determine the point at which the goods are delivered, the point at which risk in the goods for loss or damage is transferred from seller to buyer and the various costs associated with the transport of the goods”.

1 January 2020 witnessed the introduction of Incoterms 2020. Revised every ten years by the International Chamber of Commerce (ICC), this latest revision has been assessed against current business practices, taking into account new technologies and challenges faced through the intervening period.

The aim is to optimise global trade conduct, clearly defining the obligations of a buyer and seller of goods - in encouraging self-regulation and providing a rules-based framework to facilitate trade.

With each revision, the ICC aspires to advance standards and improve the outreach to businesses whose compliance with Incoterms is poor. It is recognised that many businesses do not correctly use Incoterms; businesses

should, where appropriate, challenge and encourage trade partners to utilise the correct/most appropriate rules to adopt at the outset of contractual negotiations and before a dispute arises.

Incoterms are soft rules. They are not mandatory. There are a number of common misconceptions surrounding Incoterms. In line with earlier editions, Incoterms 2020 cover the parties' obligations to arrange for the carriage and insurance of the goods. They determine the point at which the goods are delivered, the point at which risk in the goods for loss or damage is transferred from seller to buyer and the various costs associated with the transport of the goods.

Incoterms however do not cover;

- Ownership or who retains the title to the goods
- Quality of goods
- Breaches of contract
- Method or terms of payment
- Responsibility to insure the goods (Except CIF & CIP)
- Other services contractually provided
- Issues around sanctions
- Governing law and jurisdiction of contract
- Regulatory compliance requirements such as the provision of VGM
- Remedies in respect of disputes or breaches of contract.

Incoterms per se are not legally binding, unless express reference to the specific Incoterm is incorporated into

an agreement. The ICC suggests the following template for incorporation:

“[the chosen Incoterms rule] [named port, place or point] Incoterms® 2020”

e.g. FCA (Wetherill Park, Sydney, Australia) Incoterms® 2020

e.g. DAP (Unit 15, ABC Business Park, Melbourne, Australia) Incoterms 2020

It is essential to state the version of the Incoterms used; not doing so may give rise to disputes and unintended outcomes.

There is an importance in accurately inserting the correct named port, place or point of delivery, destination or both. This again will increase certainty and avoid potential costly disputes. Since 1980 Incoterms have consisted of four main groups of terms;

E – Terms – Ex Works

F – Terms – “Free” goods for export

C – Terms – Carriage (similar to F – Terms but seller contracts the carriage and invoices the buyer)

D – Terms – Delivered. Delivers goods into the buyer's country (transit and risk remain with the seller).

Key changes for 2020

Incoterms 2020 consist of 11 defined terms. There are four sea freight only rules and seven rules which can be used for any mode, with fifteen available options in total, since FOB, FCA, CIF and CIP can be assigned one of two named delivery places. Whilst this revision has witnessed only a small number of substantive changes, there remains an importance in understanding



the impact of these changes.

Delivery place – Seeking to remove the confusion historically arising between DAT (delivered at terminal) and DAP (delivered at place), the former has been replaced by DPU (delivered at place unloaded). This serves to clarify that delivery is effected once the goods have been unloaded from the ship and made available to the buyer at a specified place in the terminal.

Insurance - Only two Incoterms obligate insurance, in each case requiring the seller to purchase insurance in the buyer's name. CIF - Seller buys the insurance in the name of the buyer at Cargo Institute clauses "C" (which are restricted). CIP - Seller buys the insurance in the name of the buyer at Cargo Institute clauses "A". Parties can expressly agree alternative levels of insurance cover under both CIF and CIP.

Costs – Incoterms 2020 provides much more detail around costs and their allocation under A9. In general, costs up to delivery are for the seller and the costs thereafter are for the buyer.

Security – The 2020 text provides more detail around security. A4/B4 and A7/B7 consider security aspects.

Own transport – Incoterms 2010 assumed that all transport would be undertaken by a third party. Incoterms 2020 recognises the concept of own transport.

FCA, FOB and bills of lading – FCA obligates the seller effectively up to the point that the goods are delivered to the quayside; FOB is still widely used (incorrectly) to undertake the same function. FCA is preferential for the seller given that it does not include the risk associated with loading the cargo onto the ship. Delivery is assumed at the point that the cargo is delivered to the named place. This can in practice give rise to difficulties in terms of payment, however, for example where a letter of credit requires an on-board bill of lading. Incoterms 2020 adopts further language under the FCA term to allow the seller to require the buyer to procure an on-board bill of lading to alleviate this issue.

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The push for digital standards

By PETER CREEDEN, Director - MPC International Pty Ltd.

In 2016 / 2017, the global transport and shipping industry was gripped by the digitalisation hype. The common phrase was “Digitalisation may be the catalyst for change.” Digitalisation was everywhere and everyone wanted to talk about the technology and how it could change the transport & logistics industry. Most of the excitement and attention was because “outsiders”; VCs and start-ups, were interested in our humble and traditional industry.

In Michael J. Coren's article, *Venture Capitalists* have found another multi trillion dollar market to upend: shipping (April 20, 2017), he pointed out that USD \$4 billion has been invested by venture capitalist into 420 start-ups specifically focused on shipping. Angelist, a start-up investment platform, now reports there are only 314 start-ups in the shipping space but there are 487 that classify themselves as logistics companies.

There has been a lot of discussion about a large variety of technologies that are being pushed by all of these start-up companies. This range of technologies includes; Blockchain, Internet of Things (IoT), automation, machine learning and artificial intelligence (AI). It seems our industry has taken a few years to understand the technologies and to start asking how they can be used. Unfortunately, many of the technologies have not been widely adopted.

Implementing these technologies is not about ‘buying’ software and plugging it in. At the recent Australian Institute of Company Directors (AICD) AI breakfast briefing, Mitra Azizrad from Microsoft explained that AI is a living thing which requires a team to maintain, train, and manage each of the models. Her overall presentation was an excellent summary of what Microsoft has done over the past 4 years to change their culture and drive innovation.

The lack of change in our industry is due to the lack of digital strategies and lack of a modern corporate culture. The AICD completed a great study in 2019 called *Driving Innovation, the Boardroom Gap*. It highlighted how 57% of Australian companies have never or only occasionally had an innovation topic on their board agenda. The study also pointed out that Australian Boards are falling behind most other countries when it comes to prioritising innovation or disruption risk. Without a clear mandate by the company boards, there is a significant gap between strategy formulation and implementation. Given the tight margins and conservative nature of our industry, the lack of innovation is

even larger and the risk even bigger than the wider business community.

If our industry is to adopt these technologies, we need to change our corporate culture. Leadership by the boards and by the executive teams will be required if these companies want to become a modern data-driven organisation. Other industries, such as the music industry, have completely changed and adapted to a fully data driven industry. Leading companies in that industry identified the new revenue opportunities (subscriptions) and changed all processes to shift the business models to meet these opportunities. The pressure on our industry to change is building.

In a recent meeting with IBM, they stated that 87% of Chief Supply Chain Officers (CSCOs) reported that lack of data visibility is the greatest challenge that they are actively addressing. This is good news and after all the hype and lack of action, progress is now starting to be made. The establishment of the Digital Container Shipping Alliance (DCSA), www.dcsa.org, has been a positive step for the industry.

The DCSA is a neutral and non-profit association whose aim is to set industry wide standards. The DCSA was established by the top container lines in the hopes of getting the wider industry to accept digital standards across the whole supply chain. The DCSA's focus will be on improving standardisation, digitalisation and interoperability. The association's aim will be to publish and make available all standards to external parties.

The DCSA has clearly stated that it will not develop or operate any digital platform of its own. The DCSA is actively pushing for collaboration with the wider supply chain to ensure there is a foundation to support emerging technologies such as block chain and the Internet of Things (IoT).

Overall, Thomas Bagge, CEO at DCSA and his team have done a successful job getting the shipping lines onboard and willing to participate. The addition of Henning Schleyerbach as COO in July 2019 was

also a very positive step. Henning has over 20 years-experience with Hapag Lloyd with an extensive focus on customer service and E-business development. Henning's experience and customer focus should help the DCSA bridge the gap to supply chain industry as a whole.

DCSA have gone a long way towards delivering on these stated goals. They published the Industry Blueprint (IBP) in August 2019 and the Information model and Track & Trace standards in January 2020. Both documents are very good and quite detailed.

In support of the Track and Trace document, DCSA just released (19 February 2020) their full set of Trace & Trace APIs. The intention is for all shipping lines to use their API standards for all their customer facing events management. The API definitions can be found at Track & Trace Open API definitions.

The establishment of the DCSA and their prompt publication of the tracking and tracing standards is an important step towards digital transparency and harmonised systems.

For the wider industry to adopt these standards, DCSA should consider accepting direct participation or membership by others in the supply chain. This would go a long way towards calming some members of the freight forwarding community who are claiming that the shipping lines are imposing a “Digital Cartel”. It would also be an inclusive step forward and a better option than their intent to create their own, separate digital association. Our industry needs to be inclusive and the battle lines of the past need to be put to rest.

We will not succeed in achieving digital transparency if we stay in our silo-ed way of thinking. Let's continue to open the discussion and push for a wider, more co-operative and forward-thinking industry.



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eCommerce is simple, right? Build a website, sell stuff.

BY KAI LINCOLN, Managing Director - SEKO Omni-Channel Logistics

If you pay attention to the ads or do a simple internet search, you can be up and running with a professional looking website for less than \$200. The first step in becoming an internet gazillionaire. Easy.

Just before you decide to quit your cushy gig with that steady paycheck, I thought it might be good to map out what an eCommerce “system” may actually look like. From the most basic of setups to behemoth webs of bolt-ons, getting to an optimized, scalable and robust IT structure might take a little more than \$200. I must point out that not every company needs to involve all of these layers. It really can be as easy as a spreadsheet and selling stuff on eBay, however the bigger and more serious a retailer gets about online sales, customer experience, international localization, etc., the more complex the web of systems can become.

Budding technology entrepreneurs, the ease of coding and venture capital money has seen an explosion of systems over the last 10 years. For the first decade of the 2000’s, big systems like SAP and Oracle provided companies a one-stop-shop for most of their requirements. Some retail specific platforms, such as JDA, had a stronghold in traditional retail. These systems weren’t overly customizable and configuration often took experts who were farmed out by the various mother-ships for big dollars. This meant that once a company went down a path with a system, they were committing to at least five-to-ten years with a single platform. Horror stories of time and cost blow-outs from implementing large Enterprise Resource Planning systems (ERP’s) are commonplace.

Since 2010 and even more so in the last several years, specialized systems, which used to simply be modules of a larger platform (or something that didn’t even exist) have emerged, meaning that where a retailer used to have a single system to run their business, they might now have 5-10 different platforms, all providing individual functionality whilst being seamlessly integrated behind the scenes using new(ish) technology to share, grab or push data. The below graphic helps to paint the picture.

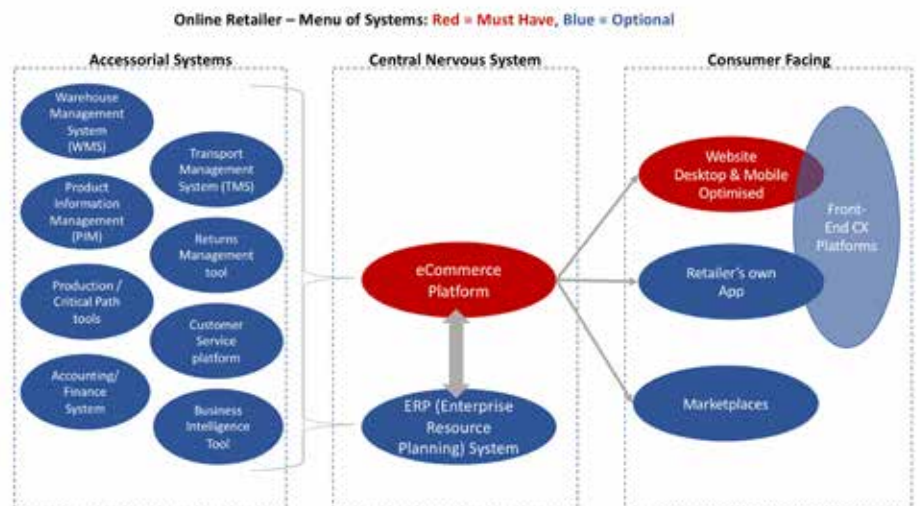
At the front is what we, as a consumer, are all most familiar with. Retailers can sell through various channels, most commonly via:

- A marketplace, like eBay or Amazon where high-traffic internet sales sites will push the products of retailers, some of whom sell exclusively on marketplaces.
- Through their own website, which will have smarts built into it to ensure that it is both viewable on desktop and on all modes of mobile hardware (phones and tablets).

- Through an app that they have built and released on an app store for Apple or android devices.

In order to ensure that the inventory is maintained, consistent, price-controlled, etc., an online retailer will often employ an eCommerce platform. Examples of this are Shopify, Magento and BigCommerce. Some of these actually have website templates ready and waiting for you to simply setup your store and start selling. The range of functions varies significantly, but in an essence, a good eCommerce platform can take an aspiring retailer from zero to sixty pretty quickly.

If you’re a traditional retailer with an eCommerce arm or a large online “pureplay” retailer with multiple warehouse locations, you may need a more centralized view of inventory, pricing and a home for all of your finances, possibly an integrated warehouse management system, a CRM (Customer Relationship Management) module and lots of reporting to keep



people busy. In this situation, we still see some of the big ERP systems being employed. Netsuite (by Oracle), SAP, Microsoft Dynamics, etc. There are emerging, lighter-weight ERP's popping up all over as well, which makes the choosing of the right ERP a difficult vetting process.

In place of a one-stop-shop ERP or, in many cases, in addition to an ERP and an eCommerce platform, there are numerous bolt-on systems that may have specialties that suit a retailer better than the available module(s) in the bigger systems.

- **Front-End CX (Customer Experience) platforms** are a fairly new creation that ensure a retailer's website looks modern, has a good flow of motion during the searching and purchasing phases and then delivers the parcel with seamless look and feel if the customer must track that parcel at any stage. These CX companies are essentially a skin that sit over the top of various sales and operating functions but enable a retailer not to worry about having to do regular rebuilds of their websites to maintain a modern look and feel. Narvar and SupplyAI both do an amazing job of front-end design.

- **WMS (Warehouse Management System):** Aside from the big traditional players – Manhattan, Red Prairie, SAP, there are new web-based, highly configurable, easier to integrate with emerging platforms. Peoplevox, 3PL Central, etc. allow online retailers to set up their own warehouse operations without spending a fortune on software. Most of the new platforms are fairly scalable and are very integration friendly for other plug-in systems like accounting platforms and TMS's.

- **TMS (Transport Management System):** Gone are the days of using one transport provider to deliver everything for you. Nowadays there are different carriers for different purposes. Same-day versus Express versus Standard, International versus Domestic, Signature Required, parcel lockers, drop-points. These are all considerations that retailers deal with when figuring out what options to provide at the final checkout. To access the best mix of services and solutions, a TMS specializes in being compliant with multiple carriers, services, etc., and being experts at adding new carriers and services as they come on the market. The TMS will often be directly integrated with the WMS and a few of the other systems being employed in the process.

- **Returns Management Systems** are quickly emerging to fill a gap left by WMS platforms. Returns are the ugly side of retail but play an enormous role in the offering by a retailer. Being able to get a parcel from a consumer and then being able to open, inspect and provide a credit/refund/exchange to that consumer as quickly as possible is key. Additional benefits are then being able to quickly return those goods to stock and re-sell them before they go out of style. Returns Magic and OmniRPS are two examples of emerging returns platforms.

- **Product Information Management (PIM)** software helps companies and retailers manage product data across multiple sales channels, product lifecycle, cost considerations, etc. PIM tools often include analytics and detailed product reporting to assist retailers with making educated decisions around their product sourcing, design, sales, redundancy, etc.

- Larger, more sophisticated retailers may employ a **critical-path/production management software**, though many still use Excel for this until they reach a tipping-point of accuracy and deliverables against cost of implementing a professional tool.

- **CS (Customer Service) Management Systems** are important for managing those customer queries when things don't go right. Zendesk, Happyfox and Zoho all play in this space and ensure that queries are captured, tracked and resolved following a standard process with little tricks to maintain consistency of language when dealing with consumers. Some of these now include those little live-chat pop-ups that can be integrated into a retailer's website in case a shopper needs help while they're on a site.

- **Accounting Systems** such as Xero, Quickbooks and Quicken can often plug directly into an eCommerce Platform and remove the need for a full-fledged ERP. The cloud-based versions have great integrations with banks (for ease of bank reconciliations), WMS, Returns, etc.

- **Business Intelligence (BI) tools** include platforms like Tableau and Avora. Although most of the systems outlined above come with standard reports and some customizable attributes, a BI tool provides a retailer with the ability to slice-and-dice data (which often comes from the different systems) in an infinite number of ways that may give them the edge in picking up another few sales, points of margin or trimming their production timelines.

I have seen retailers with all of the above systems in-play, and I have seen some with only an eCommerce Platform and an accounting system, nothing more. As supply-chain providers to the online retail environment, be it during the bulk sourcing and import phase, the warehouse fulfillment, the parcel delivery or the returns stage, as logisticians we must be conscious that there will be increased expectations that our functions will need to more seamlessly plug-in to a variety of systems.

The days of sending a spreadsheet or an email update to a client to notify them of a shipment delay or a customs hold aren't gone. This does, however, present an opportunity for logistics providers to differentiate themselves by removing human touchpoints with data updates, automatic alerts, electronic feeds of information and automated reporting and analysis. While the ecosystem of retail IT systems and platforms is far from a perfect science, there is no doubt that those who can both talk the talk and walk the walk of technology will have a distinct advantage in the future of supply-chain relevance.

“ *Just before you decide to quit your cushy gig with that steady paycheck, I thought it might be good to map out what an eCommerce “system” may actually look like* ”



Why America's hard-line stance with the Universal Postal Union was a good thing for many

By KAI LINCOLN, Managing Director - SEKO Omni-Channel Logistics

Most readers from the world of parcels would know that the UPU's vote in late September 2019 arrived at a suitable alternative to the original three proposed options. Option V will see certain countries, based on their total import postal volumes, allowed to set their own pricing for foreign postal entities wishing to access their delivery network. The USA, as the instigator (but not the cause many might state) are the main beneficiary of this vote. The long-standing "Terminal Dues" (TD) structure was based on a system created long-before the invent of eCommerce and the flood of small parcels hitting countries like the US, UK, Europe and Australia.

Let's quickly break down the losers and the winners in this historic event.

Losers

1. People who like to buy cheap stuff on the internet.

Companies like wish.com, AliExpress, Banggood, etc. have built their empires on the back of selling knick-knacks, costume jewellery, cheap clothes and cheaper electronics. These companies have utilised the services of China Post for years, who were accessing delivery solutions via the traditional UPU agreements, where China still sat as an undeveloped country. The rates that some postal entities have access to (until June 2020) are often well-below the COST for the destination postal entity to deliver the parcel from the time they take control of the packages.

2. Chinese sellers.

Companies like I've mentioned above (and countless others) are able to sell goods at margins not achievable by your normal

domestic companies simply because of their access to cheap postal delivery solutions. I could write a whole article on the cost of supply chains (watch this space!), but let's not beat-around-the-bush on this one. I have no issue with China's economic development and recent prosperity, but how they have managed to retain rates with the UPU that are so far out of whack for the last decade is beyond my simple brain. In the UPU's 2019 "Postal Development Report" where they rank countries based on a complex range of variables and formulas (which, by the way, is contained in the internet available report - if you're looking for some light bedtime literature to dive into), China is ranked 15th amongst 172 countries.

This ranking places them above countries like... Australia (25th), Singapore (18th), Norway (23rd) and a host of other countries from the "developed" world who have been paying top-tier rates within the UPU for years.

3. Savvy sellers routing freight through equally savvy "ETOE" resellers.

Without boring you too much (too late?), an ETOE refers to an Extra Territorial Office of Exchange. Whilst this might sound like an exciting sequel to an alien movie from the 1980's, it's merely a big phrase and a tidy acronym for a postal company that sets up shop in another country. Say what now? Yes, there is a thing where a postal entity like Deutsche Post can register itself in another country, like the USA, and send parcels from the USA into other countries as if they originated in Germany in order to access UPU rates. There are a host of postal entities taking part in this practice and, whilst ETOE's are blocked in some countries and ETOE freight is stopped from arriving in certain countries, you can see how it wouldn't take much for a few clever folks to figure out how to wrought the system.

Winners

1. The clear winner here are the countries that have been forced, under UPU rules, to accept freight from countries [cough-China-cough-cough] and deliver them on terminal dues pricing.

This was the driving force behind President Trump's hard-line stance and, when you understand the nuances behind it, it's hard to dispute why he did it. These countries will save billions – yes BILLIONS – through not having to deliver packages at below-cost simply because they're part of the UPU.

2. [SELF SERVING CONTENT ALERT] Non-postal cross-border companies compete in the open market against postal solutions.

In certain origins [cough-China-cough-cough] (sorry, I just can't seem to shake this tickle in my throat), the postal rate has been so ridiculously low that it has eliminated the opportunity for competition within the market. With the increasing cost of postal delivery, though, these companies will have a more commercial opportunity to offer their services, which will now be closer to parity on cost, but often out-pace their postal competitors on service offering.

3. People who like a better delivery service.

Whilst getting cheap stuff sent to you for cheap may be nice for some, for others either having a choice of another option or just simply having a better option will be a major improvement on the previous solutions. I remember my wife chasing a parcel for close to six weeks before it randomly showed up one day. No parcel tracking online, no email or text notifications about when it may be delivered, no customer service email responses. Just a big, black hole. Though we may have to pay an extra few dollars for delivery, the conscious and discerning consumer will be pleased to know where

in the world their parcel is (literally) and that their new bedazzled phone case isn't adding \$3 to their country's national deficit because of an antiquated UPU system. (But really, how cool are bedazzled phone cases?!)

So where to from here?

In the world of UPU negotiations, we hit what could be likened to a chess game between two longstanding friends (picture a bunch of old-dudes who don't like risk and are hoping that the outcome of this negotiation puts them on the wall of "Employee of the Month" for their respective postal companies). The endgame of this chess match is called a "bi-lateral agreement". The outcome of a bilateral agreement is a contract that simply says, "I'll charge you X for deliveries if you charge me Y for deliveries." So, you can see how this is a bit tricky. Unlike a normal commercial negotiation where I sell you X product at Y price, these agreements are centred around the concepts of give and take, tit for tat, and even, should I say it, "quid-pro-quo" (yep, I said it – impeach me!).

So, conceivably, in early 2020 countries will begin issuing revised rate-cards to each other. As such, you'd think (just to make it relatable), that the US will happily hit "send" on an email to China, letting them know that their parcel delivery rate will be incurring a slight increase of somewhere between 100 – 300% (depending on which report you

read). However, with the growing volume of Chinese shoppers on US websites, China might be prepared to counter with a 500% rate increase to the US!

At this stage, no one knows who will be the first to hit the "send" button, (Remember in the glory days of the old west when the threat was the first person to "pull-the-trigger") now it's who pushes a button first. And maybe who pushes that button with real vigour! Wow times have changed. And I don't know if we've actually advanced as humans...).

From this point, there will be a flurry of negotiations.

Maybe they reach an agreement.

Maybe earlier investigations of options reveal that there are non-postal, commercial solutions available?.

Drawn out bilateral negotiations lead to IT integrations with new commercial (non-postal) carriers.

Maybe some of these go-live so that consumers don't suffer.

Maybe some start changes start to look like happening, but never take-off.

Maybe there's a bunch of freight that lands in destination and local postal company simply says "Nope. Not delivering these."

Maybe I have no idea because my crystal ball is currently in the shop getting repaired, so I can't tell you what is going to happen.

So, what has this bit of dribble informed you of that can actually help you? Not much unfortunately. BUT, let's try to summarise this in some sort of sensible prose:

This isn't just about the USA and China, but as the world's number 1 and 2 economies respectively, it's something we all need to think about. The scenario of adjusting postal delivery rates will be repeated around the world in what this writer believes was a long-overdue adjustment to a system that has been reluctant to impose real change for far too long. I am not a Trump supporter, nor is this a political piece. Rather, in business there are certain undeniable truths. One of those is – if your cost is more than your sell, it's a bad situation. The UPU, for many postal entities around the world, is a bad situation and this is the reckoning.



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Australian biosecurity

Paul Zalai, Director and Co-Founder, Freight & Trade Alliance (FTA) was recently asked to contribute to the “*In My View*” column of the Australian Farm Institute’s quarterly *Insights* newsletter. The column looked at 3 questions on Australian Biosecurity. Paul was joined in the article by Melinee Leather, a beef producer from Queensland, whose other roles include chair of the Farming Systems Committee for National Farmers’ Federation, board director of the Australian Beef Sustainability Steering Group and the Environment Committee for Cattle Council Australia.

“ *While we have witnessed improvements, it is clear that ongoing reform is required in policy, improved systems, transparency in performance, automation and increased departmental human resource allocation* ”

Melinee received an Australian Biosecurity Award in 2019 in recognition for her significant contribution to maintaining Australia’s biosecurity integrity.

What do you see as the largest current threat to Australia’s biosecurity?

ML: I see the largest current threat to Australia’s biosecurity as entry of an unwanted disease. With increased movements of people, animals and parcels around the world the threat of unwanted diseases entering Australia is extremely high. A widespread outbreak of a disease such as African Swine Fever or Foot and Mouth disease would cost the economy billions of dollars and put at risk our ability to trade. Given that 70% of Australia’s total agricultural production is exported this leaves Australia very vulnerable. Even though Australia has some geographical advantage to other countries due to its isolation, the threat of disease entering at our borders is extremely high. Good border control and surveillance is vital in keeping diseases out of the country.

PZ: Threats of biosecurity incursions grow as the volume of freight, passenger, mail and e-commerce volumes continue to rapidly increase. In terms of the international trade sector, our focus revolves around the ongoing collaboration with the Department of Agriculture to safeguard against the introduction of the Brown marmorated stink bug (BMSB).

BMSB is an exotic pest that can infest and damage over 300 host plants, particularly temperate vegetables, fruits and nuts, and important agricultural crops such as apples, grapes, cotton, citrus, corn, soybeans and tomatoes. It has been spreading around the globe from its native north-east Asia, to North America and more recently through Europe.

The former Inspector-General of Biosecurity (IGB) released an independent review in May 2019 noting the efforts of the department to keep BMSB out in 2018–19 stretched Australia’s border biosecurity system close to breaking point and had severe impacts on sections of the shipping and importing industries. She noted that delays and extra costs in cargo



ship unloading and cargo release from biosecurity control were significant but unavoidable due to the need to deal with large numbers of arriving BMSB.

Are Australia's current biosecurity policies robust enough to deal with these threats as well as emerging and future threats?

ML: While Australia's biosecurity policies are quite robust and emergency action plans are thorough the ability to fund the execution of policy is inadequate. It will be vital to secure long-term funding arrangements that can ensure ongoing research and development, border protection, on farm protection and broader community protection is leading the world in biosecurity. Collaboration amongst industry, government, researchers and community must continue to ensure emerging and future threats are well resourced and dealt with using strong policy frameworks. There is no such thing as zero risk when it comes to biosecurity so we must continue to be vigilant with surveillance and response systems. We must strive for a high level of scientific expertise and innovation to ensure that novel and more efficient solutions to new biosecurity threats can be rapidly developed and applied as needed. Environmental biosecurity threats are an area that is often overlooked. Incursions of exotic organisms harmful to Australia's environment and biodiversity are a regular occurrence but don't always get the community and industry attention they deserve.

PZ: The department and industry have responded positively to both the IGB BMSB review and emerging risk and risk assessments carried out by Plant Program, by introducing many new measures in the 2019 – 20 season (high risk goods / origin consignments shipped between 1 September 2019 and 30 April 2020 inclusive) reducing adverse impacts on the movement of international trade.

While we have witnessed improvements, it is clear that ongoing reform is required in policy, improved systems, transparency in performance, automation and increased departmental human resource allocation.

This will clearly come at a cost and will not doubt be borne by the import sector as the "risk creators".

Representing major importers, customs brokers and freight forwarders, FTA / APSA look forward to engaging with the department to deliver a funding model that features:

“ *In terms of the international trade sector, our focus revolves around the ongoing collaboration with the Department of Agriculture to safeguard against the introduction of the Brown marmorated stink bug (BMSB)* ”

- transparency of fund allocation ensuring frontline departmental resources are boosted to best deal with biosecurity threats and to deliver services to industry at agreed levels; and
- mechanisms to pay to the government at a net rate (avoiding the scenario of having charges administered on third parties which results in cascading charges being added down the supply chain inflating costs ultimately paid by importers).

Do you believe the broader industry and community are aware of the significance of biosecurity in protecting Australia's food security and the importance of their role in preventing incursions?

ML: Awareness around biosecurity can always be improved on. In recent years the level of awareness has increased partly due to the biosecurity incursions we have experienced in Australia and those that we have witnessed abroad. The broader community requires continued education not only about biosecurity threats but the actions they must be diligent with for prevention. Human health, public comfort and the importance of protecting food systems in order to feed a growing global population should be good drivers for greater community awareness. For industry to realise the importance of their role across the national biosecurity system they must take ownership of issues and work in a coordinated fashion for the national interest. Industry needs to lead in biosecurity practices which can be driven on farm.

PZ: The broader community are aware of biosecurity matters that 'hit the headlines' such as the highly contagious white spot

in prawn detections and the measures taken to safeguard Australia from the potentially devastating effects of African swine fever.

More could be done to build awareness and highlight other biosecurity risks.

Again, BMSB is a good example.

Public campaigns would be beneficial to demonstrate the initiatives being taken by government and industry. This would give a broader range of stakeholders an appreciation of the extraordinary biosecurity risk posed by this pest and importantly, the work (and associated costs) being committed by the department and professional international trade logistics providers in managing current complex import processes.

As BMSB and other biosecurity risks spread across the world, more efforts and more resources will be needed to prevent incursions and disruption to Australia's international trade.

CLOSING COMMENT BY PAUL ZALAI

Our biosecurity system underpins our international reputation as an exporter of safe, quality and sustainable food and fibre. Our global customers seek Australian products because we do not have the destructive pests and diseases found in other parts of the world that can have such an impact on yield and nutrition.

While our farmers, fishers and foresters are major beneficiaries of our strong biosecurity system, our environment and the health and lifestyle of every Australian also relies on the system. Imports pose a significant risk, whether that is large consignments arriving on cargo ships, parcels or online shopping, or the general public flying back to Australia after an overseas holiday.

Close cooperation between government and industry is essential if we are to stay a step ahead of global threats.

It is important that the actions of government and industry are complementary and that we learn from one another so we can leverage effectiveness and avoid unintended consequences of regulation.





Post-border biosecurity in NSW – a second line of defence

By Dr. NICOLE SCHEMBRI, Peri Urban Program Coordinator – Compliance and Integrity Systems, Department of Primary Industries.

The NSW Government – specifically the NSW Department of Primary Industries (NSW DPI) and Local Land Services (LLS) work to increase the value of primary industries and drive economic growth across NSW. Much of our work starts at the farmgate and there is no bigger farm gate than our Ports!

Post-border surveillance represents a secondary line of defence to bolster Federal Government quarantine activities to prevent the entry of pests and disease of agricultural, environmental and lifestyle importance. These pests may come into Australia via the cargo or tourist sea port systems and be located along high-risk pathways which provide a potentially ideal environment for these pests to proliferate.

and agricultural pests and protect locally threatened or endangered species. In Greater Sydney, the LLS also work with the local councils and community groups surrounding Port Botany, supporting post-border biosecurity activities, including cargo pest and new invasive species surveillance and reporting activities.

Greater Sydney LLS, NSW DPI and DAWE provide Environmental, Weeds and Biodiversity officers from Randwick, Sutherland Shire, Bayside and Georges River Councils with annual post-border biosecurity training. Staff are

With red imported fire ants detected at Port Botany in 2014 and brown marmorated stink bugs detected at Glendenning, north-west Sydney in 2017, local council, industry, community and broader public engagement has been essential in boosting surveillance, detection, reporting and also for the control and management of exotic plant pests and new incursions post-border.

NSW Government - NSW DPI and LLS - work in collaboration with the Department of Agriculture, Water and the Environment (DAWE), local councils, and the community undertaking a range of post-border cargo and exotic plant pest surveillance activities to:

- boost industry and community awareness and engagement in cargo pest and new incursion surveillance and detection and
- protect our agricultural industries, community health and the local environment from biosecurity threats that have spread through border controls.

The regionally based LLS work in partnership with local councils to reduce the impacts of weeds, environmental

“ *The post-border biosecurity mission is to engage council, industry, community and broader public to combat biological threats by providing assistance to improve biosecurity, pathogen and pest surveillance* ”



Red fire ant nest



Brown marmorated stink bug on tree

upskilled in pest identification and habitat, impacts, best practice surveillance and reporting of high-risk pests. On-site depot risk assessments and practical field training have been an essential part of this program. Now into its fourth year, the council pest surveillance program continues to expand and is critical to our post-border biosecurity activities in high-risk natural areas.

Martin Horwood, Plant Biosecurity Officer from Greater LLS explains, “Local council officers have been very keen and enthusiastic in supporting post-border biosecurity surveillance and reporting to protect their local natural areas. We started the program with two local councils and with increased detections of BMSB at the border and sightings of other new invasive species such as cane toads, the program has grown and continues to gain momentum.”

The local community form an important network for pest surveillance. Plant biosecurity staff in Greater Sydney LLS carry out a community garden surveillance program that involves educating participants about high-risk pests, trapping, trap surveillance and reporting. To date, 14 community gardens along high-risk pathways from the sea cargo and tourist ports have been included in the program.

“Engaging local industries and community groups such as Landcare and community gardens are a key part of our post-border

surveillance activities. These stakeholders regularly provide reports of suspect pest and new invasive species, acting as “sentinel” or early warning sites so that potentially dangerous pests can be detected and controlled before spreading to our peri-urban and regional production zones, causing irreparable damage,” says Martin.

In addition to industry, stakeholder and community engagement and surveillance activities, the NSW Government Plant Biosecurity, Biosecurity and Food Safety, and Forestry officers undertake a range of post-border surveillance activities to further protect our agricultural, forestry and environmental sectors from exotic pests and diseases or the spread of new invasive species:

- Cut flower surveillance is conducted at Sydney’s Flemington Markets for exotic

and endemic pests and pathogens and signs of devitalisation;

- Engagement with the residential community and commercial pest control industry under State Biosecurity Legislative requirements has resulted in several detections of dry wood termites. These exotic pests arrive via timber imports for use in the construction industry. Recently costing the NSW Government over \$50,000 to fumigate a residential home in south-western Sydney, this is a potentially significant pest.
- Surveillance of exotic tree borers and beetles is regularly carried out in proximity to Port Kembla, Port Botany and the Overseas Passenger Terminal in Sydney.
- Sticky traps have been placed near Sydney airport for spotted winged drosophila (SWD) and glassy winged sharp shooter (GWSS). The SWD affect berries and small fruit while the GWSS is a key vector of *Xylella fastidiosa* – a highly pathogenic plant bacterium causing a variety of diseases, with significant economic impact for agriculture, public gardens and the environment.

The post-border biosecurity mission is to engage council, industry, community and broader public to combat biological threats by providing assistance to improve biosecurity, pathogen and pest surveillance. In every sector where post-border biosecurity is engaged, the long-term goal of our activities is to build sustainable capacity for biosecurity. Since 2016, the post-border biosecurity program has expanded its scope of work, scope of engagement, and funding commitment. To assess our success, we are working with collaborators to develop metrics that will enable assessment of not only the nature and extent of our engagement, but also the sustainability of the programs and capacities that we are introducing.



pyramid trap



Sticky trap



New decade, new name, same strong biosecurity focus

By LYN O'CONNELL, Deputy Secretary - Department of Agriculture, Water and the Environment

The new year brings with it a new decade. For us, it also brings a new name.

On 1 February we merged with the environment functions of the Department of Environment and Energy. Together, we are now known as the Department of Agriculture, Water and the Environment.

Rest assured, there's been minimal impact to our online systems and services to accommodate this change. For most of you, the only change you'll notice is our new department crest.

You shouldn't expect to interact with us any differently in the short term. For example, our email addresses will now appear as first.lastname@awe.gov.au, however, all emails sent to @agriculture.gov.au will be received as normal. We will inform you when our email addresses are fully transitioned.



Our new website is awe.gov.au, but the links you currently use to access department systems remain the same for now.

The new department will strengthen the Australian Government's ability to deliver effective sustainable resource policy outcomes across agriculture, water and the environment. This is particularly important for rural communities and the agricultural sector, especially in the long dry periods and droughts that many regions are facing.

As a department, we continue our strong focus on identifying and managing biosecurity risks, as well as modernising our biosecurity system to safeguard our primary industries and environment well into the future.

Strengthening our border measures to prevent coronavirus (2019-nCoV)

Our biosecurity system encompasses measures for the protection of human health from potentially dangerous infectious diseases. Many of you would be aware of the heightened surveillance and biosecurity efforts at our borders to prevent the entry of coronavirus.

It's important that international vessels continue to complete pre-arrival reporting about the health of people on board.

Vessels should also continue to update their pre-arrival reporting if the human health status of passengers or crew changes.

Further information on additional requirements and risk reduction measures for the port and shipping industries is now available at www.health.gov.au.

Please continue to check the Department of Health's website regularly to stay up-to-date.

Expanding the Compliance-Based Intervention Scheme

We've transformed our approach to managing biosecurity risk on imported plant products by incorporating a number of products onto the Compliance-Based Intervention Scheme (CBIS).

The scheme provides inspection savings, and facilitates a smoother clearance process of compliant goods through the border. It also means more efficient allocation of departmental resources to areas of highest risk or non-compliance.

The expanded scheme uses a risk-based approach. It included 37 plant products in 2019, with 6 new plant products and some animal products being scheduled for inclusion in the first part of 2020.

To ensure that you have the best chance of being eligible for the scheme and the benefits that it provides, make sure you apply the appropriate tariff code, and provide an AQIS Commodity Code (ACC) where one is required.

It's a smarter approach to managing biosecurity risk—and particularly fitting given 2020 is the International Year of Plant Health.

Seasonal measures standing up to brown marmorated stink bug

We're just over half-way through the 2019–20 brown marmorated stink bug (BMSB) season. The policies put in place for this season have been effective, with few live detections found on the targeted pathways.

So far this season we have had 26 live and 128 dead BMSB detections across all pathways.

We've turned away 2 vessels due to unacceptable biosecurity risk following

detection of BMSB and other seasonal pests.

In the coming months, we will review the 2019–20 BMSB season and identify potential risk countries and tariffs for the 2020–21 BMSB season.

Innovation in the biosecurity system

Australia's biosecurity system is effective in managing current risks. But future challenges, including increasing volumes of cargo, mail and travellers, will put significant strain on the system.

Over the past 5 years, we've been investing in making the system smarter. We're using analytics, innovative technologies and new approaches to help us manage biosecurity risks.

This includes doing business differently through innovation—which is opening new realms of opportunities.

We are working with innovators from the business sector, universities and research entities, including the CSIRO, University of Melbourne, DXC Technology and PwC.

We've adopted world-first technologies including 3D X-ray units at Melbourne International Airport and Australia Post's

mail facility. These units use algorithms, developed in partnership with New Zealand's Ministry for Primary Industries, to automatically detect biosecurity risk items. This provides more effective and efficient screening for baggage and parcels.

We're also innovating in our detector dog program.

One of the ways we're doing this is by analysing and measuring the benefits of detector dogs across different pathways. As well as looking at training regimes to improve scent recognition for a range of risk materials.

We've also partnered with canine and genetics researchers from the University of New England to improve dog selection techniques. Their research is looking at the factors that influence a dog's ability to be trained.

Improving the detector dog program will lead to efficiencies in cargo, mail and passenger clearance.

In biosecurity screening, we're working on a new mobile application for biosecurity officers to capture passport data. We're also looking into technology for enhanced traceability of plant products, a BMSB

sensing project and eDNA technology.

Ongoing collaboration is essential to ensure we meet rising challenges. These are just some of the ways we're collaborating with businesses, universities and researchers to better address biosecurity risks.

Co-designing an onshore biosecurity levy

We are also working collaboratively with industry colleagues to co-design a new onshore biosecurity levy.

This levy will help fund our increasingly complex and challenging biosecurity system. Funding from the onshore biosecurity levy will support programs that cannot be cost recovered.

The co-design process has been a great opportunity to explore levy design options, better understand the issues that industry faces, and ensure a solution is developed that best meets the needs of both government and industry.

I encourage you to stay up-to-date on all the department's biosecurity news, including the progress of the levy, by subscribing to our news feeds at: awe.gov.au/news/stay-informed.

Do you need assistance with...

Biosecurity

- Biosecurity import commodity research and analysis
- Illegal logging
- Biosecurity approved third party arrangements
- Biosecurity Approved Premises
- Biosecurity import permits
- Biosecurity compliance
- Biosecurity training and assessment

Piece level Screening

- Designing screening processes using x-ray, metal detector and ETD.
- Investigate and propose the most appropriate equipment.
- Provide start to finish processes for export cargo
- Develop Standard operating procedures
- Provide insight into legislation in relation to piece level screening
- Provide assistance in attaining either off Airport RACA or Accredited Cargo Agent status

**If your answer is YES,
we can help**

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The new 4.7 Approved Arrangement - the good, the bad and the ugly.

By ANDREW CHRISTIE, Director - Andrew Christie Consulting

The last five years have seen a host of biosecurity threats hit our shores and impact the way we, as an industry, perform our business. Brown Marmorated Stink Bug (BMSB), African Swine Fever, and most recently Coronavirus, are just a few of the recent risks changing the face of the import and export industry. With every new risk, we have seen and will continue to see, new and dynamic ways of operating to manage biosecurity risk.

By way of example, the risk of BMSB has generated a series of changes over the last two years as a result of the Department of Agriculture, Water and the Environment (Department) strategy for managing the risk of incursion. The first change was seen in the strengthening of their offshore treatment compliance. Treatment providers are now required to register to become accredited, with the Department then undertaking overseas onsite audits of these companies. This has significantly bolstered their assurance that goods are suitably treated prior to being imported into Australia.

The introduction of a new class of Approved Arrangement (AA) is another significant change.

The 4.7 “Secure unpack for treatment of seasonal hitchhiker biosecurity pests”, now allows the partial unpack of containers, to allow for efficient and effective treatment of goods. This has meant importers can treat their consignment onshore, eliminating the need for re-exporting the consignment for treatment, bringing savings of effort, time and money. **Definitely good.**

Whilst this new class of AA has presented a godsend for many importers, some depots have found meeting these requirements challenging, to say the least.

To start, the translation of the specific requirements for a 4.7 has left many scratching their heads, when you add to that the confusion around new requirements for manufacturing enclosures, we saw some depots engaging in elaborate and often expensive processes in an attempt to meet the requirements. This certainly stands to represent **the ugly**, however there is good news. It is possible to navigate the requirements and achieve

4.7 approval, if you need help, reach out to a consultant.

Prior to 4.7 approval, the depot must demonstrate to the Department the process it will utilise for moving potentially contaminated cargo for treatment and this has sent many depots back to the drawing board. While some may see this is unnecessary or even overkill by the department (**the bad**), it in actual fact demonstrates that the Department is serious about ensuring awareness and accountability for those wishing to apply and take on the duties relevant to a 4.7 Approved Arrangement. It is an excellent example of requiring demonstrated competence, rather than competence assumed through a desk audit (or tick and flick type process).

It is crucial that, as an industry, we see past the initial perceived hoops and barriers and increase both our confidence and capability in demonstrating to the Department, that we can meet reasonable and well-defined requirements in the interest of protecting Australia’s biosecurity. The days of assumed compliance or compliance assured via indirect means have gone, because they needed to.

Industry is up to the task. And that is definitely good.

“**Treatment providers are now required to register to become accredited, with the Department then undertaking overseas onsite audits of these companies**”



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¹ <https://www.statista.com/outlook/243/107/ecommerce/australia>

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Why a French language convention now impacts Australian customs compliance

By RUSSELL WIESE, Principal – Hunt & Hunt Lawyers

The cornerstone of Australian customs compliance is tariff classification. The 8-digit HS code given to each and every imported good determines a range of factors, such as duty payable, available concessions, whether the import of the good is prohibited and biosecurity requirements. It goes without saying that you cannot achieve customs compliance without correctly classifying goods. A recent Australian High Court case has added a continental element to this task by imposing a French language element into Australian tariff classification.

Classification of vita-gummies

For the past few years the Comptroller-General of Customs and Pharm-A-Care Laboratories Pty Ltd have been in a dispute as to whether gummies (lollies) containing vitamins should be classified as a food or medicament. Classification as a food attracted 5% customs duty and medicaments could be imported duty free. Naturally, Pharm-A-Care was seeking the duty-free medicament classification.

Tariff classification is based on a globally harmonised system which encompasses a series of sections, chapters, headings and subheadings. It is often the case that a good can fit within multiple headings. For example, a windscreen could be seen as a piece of glass or as a vehicle part, each

of which have separate classifications. Where this is the case, various notes exist to direct how disputes between competing sections, chapters and headings will be resolved.

The harmonised system is based on an international convention which was produced in equally binding English and French language versions.

In the vita-gummy case the classification issue came down to 3 competing tariff headings. Heading 3004 applied to medicaments for therapeutic or prophylactic uses, heading 2106 applied to food preparations and heading 1704 applied to sugar confectionary. The matter was originally heard in the Administrative Appeals Tribunal (AAT) where it was found that the gummies had health benefits so therefore classification under heading 3004 was possible. However, Customs argued that heading 3004 could not apply, if the vita-gummies could also be classified as a food. This was because note 1(a) to chapter 30 provided that the chapter does not cover:

“Foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparation for intravenous administration (Section IV).”

This should be an easy direction – if a product is a food, it will not be classified as a medicament. The AAT (and the Full Federal Court on appeal) found that vita-gummies were not foods, and therefore classified the goods to heading 3004.

Much of the argument was focused on the meaning of note 1(a) to chapter 30 and whether the examples in brackets had to themselves be identifiable to food. In particular, Customs argued that it was not necessary for a “food supplement” to be a food before the note applied.

The AAT and Full Federal Court both held that the wording of note 1(a) meant that the examples in brackets are only excluded from chapter 30 if they are “foods or beverages”. In particular, it was held that for a food supplement to be excluded by the note, the food supplement must first be a “food”.

Having lost on the English meaning of the words at both the AAT and the Full Federal Court, Customs embraced the French version of the tariff and appealed to the High Court.

French vs English Text

Customs argued that the clear introductory words of note 1(a) “Food or beverages (such as...” should be read in a different way as those same words are completely absent from the French version of the harmonised code. In making this argument, Customs argued that the French version of the text was equally authentic as the English version. Customs argued for an interpretation of the English words that was harmonious with the wording in the French version. The clear difficulty with this approach was that the English version was clear and contained words absent from the French version. The two versions could not be reconciled without offending the clear meaning of the English version.

It was noted by Pharm-A-Care that the Australian parliament only voted to enact the English version of the HS code and the legislators would almost certainly be unaware of the French wording.

The High Court accepted the position of Customs and said that the note to Chapter 30 should be interpreted as only excluding the words in brackets, being “dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters” and not “food or beverages” generally. That is, Customs and importers should pretend that the words “food or beverages” at the start of the English note does not exist.

Adopting this legal fiction had the outcome that note 1(a) does not exclude food or beverages generally, but rather only the specific examples provided. Further, a good need only meet this description and need not also be categorised as a food or beverage. The bizarre outcome is that a note which clearly states that “food and beverages” are excluded, will now:

- exclude food supplements, regardless of whether or not they are a food or beverage; and
- not generally exclude food or beverages.



This is a dramatic change in the meaning of the note and one that is not open on a fair reading of the English words. This shows the impact of adopting an interpretation consistent with the French wording.

Implications of giving priority to the French version

The High Court has endorsed an approach whereby the English wording of the HS code (contained in schedule 3 to the Customs Tariff Act 1995) needs to be interpreted in a manner that is consistent with the French language of the HS code. This raises the following issues:

- When should customs brokers and Australian Border Force officers refer to the French version of the tariff over the English version in the Customs Tariff Act?
- How would those administering the tariff even know when there is a material difference between the French and the English versions?
- If the English version is required to be tested against the French version, could any ABF officer or Customs Broker properly do their job without being able to read French?
- Even if you find a difference between the English and French versions, what guidance is there as to which version should be preferred?

The approach put by Customs, and accepted by the High Court, has the potential to turn tariff classification into a linguistic nightmare. This may seem like a dramatic claim, but consider the position of the customs broker originally classifying the importation of vita-gummies. That customs broker would have read a note in English that said chapter 30 excludes food or beverages. The broker would then have formed the view that the vita-gummies were only excluded if they were identified as a food. However, the High Court has now said the question was not whether the vita-gummies were a food, but rather, whether they were a food supplement (regardless of whether they were also a food). Put simply, the customs broker could not have read the note in the legally correct way without identifying the difference between the English and French text and reconciling that different wording.

So does this mean that vitamins are classified as a food?

Despite losing on the interpretation issue, Pham-A-Care was actually successful as the Court found that the vita-gummies were not a food supplement and were not excluded from Chapter 30 (even with its modified interpretation). The general position to take from the case regarding vitamins is that they will be classified as

a duty-free medicament as they are seen having health benefits and are not excluded by the relevant chapter notes.

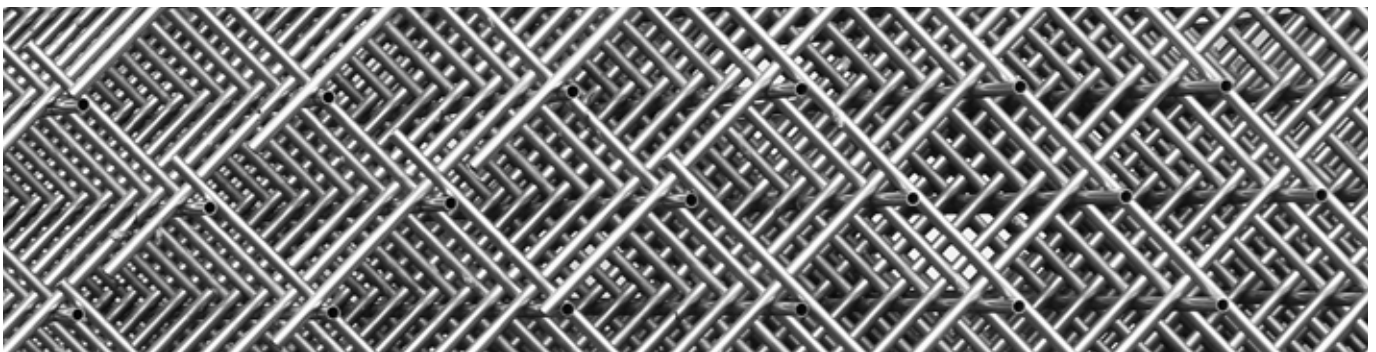
Customs obviously wished to avoid this outcome given that it was prepared to give up the primacy of the English language version of the HS code in order to achieve it. In the end it ended up with the worst of both worlds:

- vitamins are classified to a duty-free heading; and
- interpretation of the English HS code now involves reconciling that code with the French version.

While the parliament can pass legislation to change the duty outcome, Customs and the importing community are stuck with the nightmare outcome that unless the French text is considered, uncertainty will exist regarding every element of the English language HS Code.

**Please contact Russell Wiese
(03 8602 9231, rwiese@huntvic.com.au)
if you would like to discuss how this case applies to your imports.**

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Export Controls on dual-use goods

By SUSAN DANKS, Head of Customs and Regulatory Compliance – Freight & Trade Alliance (FTA) Pty Ltd

Australia's export controls are contained in legislation that includes the Customs Act 1901, the Defence Trade Controls Act 2012 (DTCA), Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 and Military End-Use provisions (section 112BA) and by sanctions. The Department of Foreign Affairs and Trade (DFAT) administers the implementation of sanctions, which restrict or prohibit the export of specified goods to particular countries or individuals or entities. The Department of Defence administers the supply of defence and dual use goods overseas.

This article includes a brief discussion of dual use goods, including the Defence and Strategic Goods List (DSGL).

Controls on the supply of Defence and Dual Use Goods

Australia is a member of four major export control regimes, the Wassenaar Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group and the Australia Group, and as a member has committed to ensuring that Australian exports comply with our international obligations, our own national security and that they meet our strategic policy objectives.

Australia implements controls on the most critical items and technology that could contribute to, for example, development of weapons of mass destruction (WMD), through the *Defence Trade Controls Act 2012* ("the Act").

The legal authority for these controls is Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*, which provides that the export of any item listed in the DSGL must be approved prior to export.

The purpose of the Act is to control the transfer of defence and strategic goods, software and technology in accordance with Australia's international obligations. The Act includes provisions regulating:

- brokering the supply of goods on the Defence and Strategic Goods (DSGL) List and related technology; and now
- the intangible supply of technology relating to DSGL goods, such as supply by electronic means

The Defence and Strategic Goods List (DSGL) administered by the Department of Defence specifies the goods, software or technology that is regulated and requires a permit when exported, supplied, brokered, published or transhipped through Australia, unless there is an exemption. For example, Defence agencies exporting military goods for an exercise are exempt, but, if the export is done by a freight forwarder, an export permit may be required.

The list is divided into two parts and applies to both new and used goods:

- Part 1 is the Munitions (military goods) List. These are military items designed or adapted for military purposes or non-military goods those that are inherently lethal, incapacitating or destructive;
- Part 2 lists goods that are "dual use", that is, commercial items and technologies that may be used or adapted for use in a military program or contribute to the development and production of chemical, biological or nuclear weapons or systems. These are in the following 10 categories:

- Category 0 – Nuclear Materials;
- Category 1 – Materials, Chemicals, Microorganisms and Toxins;
- Category 2 – Materials Processing;
- Category 3 – Electronics;
- Category 4 – Computers;
- Category 5 – Telecommunications and Information Security;
- Category 6 – Sensors and Lasers;
- Category 7 – Navigation and Avionics;
- Category 8 – Marine;
- Category 9 – Aerospace and Propulsion.

This List is amended from time to time to reflect changes in the various multilateral non-proliferation and export control regimes of which Australia is a member. This List is also common between member nation

signatories to the relevant Agreements, however, there is the occasional slight difference in controls between certain goods in some categories between nations.

Defence has an online self-assessment DSGL search tool available. To establish whether a particular item is controlled, you need to first check the DSGL to determine if the goods themselves are listed, and then whether related materials, equipment, software or technology are also listed.

There are some exceptions, for example DSGL technology already in the public domain or what would be considered as basic scientific research is not controlled, otherwise, unless either a permit has been granted by the Minister for Defence or a legislative exemption applies to the export, supply, publication or brokering activity, such goods may not be exported. .

If the goods are listed on the DSGL, the technical specifications of the goods against the control thresholds in the DSGL must be checked. Commonly, this associated technology may also be controlled if it is 'required' for the 'development', 'production' or 'use' of the controlled good. For example, the DSGL lists computers that are designed to operate below -45 °C or above 85 °C. The control only applies to the technology necessary for the computer to operate at these temperatures. Technology that does not influence this ability is not controlled.

Controls on the intangible supply of technology for DGSGL goods have also been in place since 2 April 2016. Goods that are in intangible form, which would require a permit to export if they were in tangible form (i.e. if they were actual goods), now also require an export permit. Some examples of intangible means are email, fax, telephone and providing access to training or electronic presentations that contain DSGL technology. The provisions apply across all sectors of industry, including universities, training and research.

It's important to remember too that the inclusion of controlled information in the repair and return of goods, or provision of a technical paper, specification, blueprint or even an email containing such information, sent overseas even if to a fellow employee or a client, is prohibited unless an export permit is first obtained. Importantly, it does



not matter to what country the information is exported, including our allies.

The outcome is that a permit is also required to take controlled technology stored on a physical medium, such as on your laptop or a USB drive, outside of Australia. This includes scenarios where the information is sent by post or is carried by hand or in checked baggage.

Please note that goods and technology that are not controlled in the DSGI may still be prohibited for export by the Minister for Defence if they are considered to be capable of use in a WMD program. Such a prohibition would be made under the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*.

Examples

Examples of goods / technology for which export permits may be required:

- Vacuum pumps; high temperature rubber rings; gas centrifuges; (Category 1)
- some types of valves and composite materials (Category 1);
- machine milling tools (Category 2);
- some carbides and coating technologies (Category 2);
- various lasers (Category 6);
- decryption algorithms (Category 7); and

- technology for machining propellers to reduce underwater noise (Category 8).

Export permits

Applications to export defence and dual-use goods are made through the Defence Export Controls (DEC). They are considered on a case-by-case basis and assessed to determine whether the controlled activity would be prejudicial to the security, defence or international relations of Australia. These assessments include consideration of Australia's international obligations, regional security, national security and foreign policy, and human rights.

It should be noted that if goods to be exported to a country subject to sanctions also appear in the DSGI, separate permissions are required from Department of Foreign Affairs and Trade and Defence.

US Export Goods

The United States controls the export, import and use of certain military and dual use items, both inside and outside USA through the *International Traffic in Arms Regulations and the Export Administration Regulations (EAR) / Commerce Control List (CCL)*. Note that these controls are separate from and in addition to any required Australian export licences.

Essentially, if an export from Australia

contains any tangible (e.g. parts) or intangible goods (e.g. software) that are of USA origin that would require an export permit from USA, then an export from Australia may require export permits from both Australia and USA. Although export permits for Australian goods are obtained through Defence Export Controls (DEC), they do not provide the export permits for controlled US origin components or software, which must be obtained from USA.

Penalties

If you get it wrong? Significant penalties including seizure and forfeiture of the goods, a 10 year prison term and/or a fine of 2,500 penalty units can apply. If the goods also include components etc of US origin, then significant penalties may also be incurred from US.

Past examples in Australia include attempts to mail small quantities of high temperature viton orings and certain drones. Similar examples have occurred in USA and Canada. For example, what was essentially a mail room mix up in Canada for fifty synthetic rubber rings, worth a few cents each, resulted in a CN\$90,000 fine. In the USA, large penalties are commonly issued. For example, in 2014 penalties for violations included one for US\$10 million and one for US\$20 million.



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NEW FREE TRADE AGREEMENTS ARE A PLUS FOR IMPORTERS AND EXPORTERS – BUT COMPLIANCE LIES IN THE FINE PRINT

By RUSSELL WIESE, Principal – Hunt & Hunt Lawyers

In the first half of 2020 three separate new free trade agreements (FTA) will commence between Australia and each of Hong Kong, Peru and, most significantly, Indonesia. For importers, the result will generally be across the board duty free entry of goods from these countries. For exporters, the duty reduction will depend on the particular product. However, the vast majority of goods will be duty free.

“ *FTAs should be utilised, but remember that their use constitutes a tax deduction. Like any tax deduction it is crucial to make sure you qualify.* ”

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However, duty reductions under free trade agreements do not occur automatically and it is truly a case of the “the devil lies in the detail”. However, what makes use of FTAs particularly difficult is that the detail is different for each FTA. In this article we will demonstrate why importers/exporters cannot assume that the rules for one FTA apply to another meaning that customs compliance must be an integral part of your strategy regarding use of FTAs.

Why are the rules different for each FTA?

FTAs are agreements between Governments. Sometimes it will be two Governments (such as the above-mentioned FTAs) other times the agreement will involve multiple Governments, such as the Trans-Pacific Partnership. While Australia may have a standard position regarding the terms of FTAs, it needs to also accommodate the demands of the other party or parties to the FTA. If both countries want a modern FTA that focuses on trade liberalisation, there may be little need to compromise. However, where one country has heightened concerns regarding the potential misuse of the FTA, you are likely to see an agreement with stricter requirements.

The situation is even more complex with multilateral FTAs where the viewpoints of a dozen nations may need to be taken into account.

Other differences can result from timing. The FTA Australia concluded with Thailand in 2005, may look very different to the FTA Australia would seek to negotiate today. As a general rule, the more modern

the FTA, the more likely it is to include provisions that make use of the FTA easy.

What are some common differences?

In respect of trade in goods, the most common differences are:

- **the preferential duty rate** – the benefit granted under the FTA will depend on the country. Australia usually drops the rate to 0% on almost all goods. With export markets, it will depend on a variety of factors such as the starting rate, the need to protect the local industry, revenue raising and the domestic appetite for free trade.
- **documentation requirements** – almost all FTAs require a certificate or declaration of origin relating to the consignment. The difference generally lies in who can produce the document. Does it have to be a Government body or could it be the exporter, producer or importer.
- **Indirect shipments** – Very little trade is shipped directly to Australia. FTAs need rules to say when a good that is shipped via a third country loses the benefit of the FTA.
- **Rule of origin** – FTAs need rules to limit which goods benefit. It is not simply the case that the FTA applies to all exports from a particular country. Most FTAs are identical on when 100% originating goods qualify (such as minerals, fruit and vegetables, animals and meats). The divergence tends to be around goods that contain components or ingredients from a third country.

Exporting a multivitamin to each of the new FTA countries

To see the difference in how FTAs work, let's consider an Australia exporter of multivitamins to each of Peru, Hong Kong and Indonesia. The goods are made in Australia, but the active ingredients are imported. In this example, the exporter initially ships all the goods to a regional distribution centre in Singapore.

The first issue the exporter needs to consider is whether there is any benefit in using the FTA. Under the Indonesian FTA the duty rate drops from 5% to 0% while under Peru it is 9% to 0%. For both of these countries it is worth using the FTA. However, for Hong Kong, the duty rate is 0% regardless of whether the FTA is used. The exporter no longer needs to consider the requirements of the Hong Kong FTA.

The next issue is whether the goods qualify for the FTA. Under the Indonesian FTA for this good the rule is either a change in tariff classification, or that a minimum of 40% of the value in the good is attributable to Australian or Indonesian originating goods. The only imported content is the active ingredients, being the vitamin. If this constitutes less than 40% of the FOB value of the goods, they will qualify.

Under the Peru FTA there is no numerical content test for this classification. The goods will only qualify if the imported content undergoes a change in tariff heading with the additional requirement that any change in tariff heading does not result exclusively from packaging the imported good for retail sale. In this case the imported active ingredient is classified to chapter 29 and the exported manufactured capsule is classified to chapter 30. The change in tariff classification happens as the vitamin extract is manufactured into a vitamin capsule. It is more than merely repackaging and the exported multivitamin qualifies.

Under both FTA's the exporter needs a document certifying origin. Under the Peru FTA the exporter, producer or authorised representative completes the document. There is no prescribed format. Further, if requested by Peru Customs, the document must be produced in Spanish.

Under the Indonesian FTA, the document will be produced by an authorised body, such as a chamber of commerce, unless the exporter has registered with the Australian Government. If registered, the exporter may produce their own

declaration of origin.

If the exporter is exporting the same goods over the next 12 months, under the Peru FTA it can use the one certificate of origin for the multiple consignments. Under the Indonesian FTA, a new COO/DOO will be needed for each consignment.

Lastly there is the issue of transshipment via Singapore. The Peru FTA requires that the goods not enter the commerce of Singapore. The Indonesia FTA requires that the goods remain under customs control. Both FTAs probably have the same outcome that the goods must not be cleared in Singapore for customs purposes.

There is an extra requirement with the Indonesian FTA, the shipment via Singapore must be justified by geographical, economic or logistical reasons. This is OK with a planned transshipment. However, consider the case where goods are initially shipped to New Zealand, the buyer goes bankrupt and it is decided to ship the goods to an Indonesian buyer. In that case will the Indonesian Government accept that shipment to Indonesia via New Zealand was due to geographical (no), economic (maybe) or logistical (no) reasons? This would not be an issue under the Peru FTA.

Interestingly, the Hong Kong FTA does not contain any such restriction, the goods can be imported into a third country. However, there are still strict controls on what can happen to the goods in the third country.

Lastly, what happens if the exporter didn't provide an origin document, the importer pays duty and in 2 years' time the importer raises this with the Australian exporter. Under the Peru FTA a self-certified COO could be issued, that COO would be valid for 12 months and the refund could be claimed (subject to Peruvian law). Under the Indonesian FTA a COO can only be issued within 12 months of export. If the issue was discovered 2 years after shipment, the refund opportunity would only exist if the exporter was registered and could issue DOO.

A lot of differences

Considering that the 3 FTAs were concluded in a very similar timeframe, the level of difference between each is remarkable. It is not a deliberate strategy by Australia, just a reflection that each FTA

involves different negotiating parties with different sensitivities. The above example highlights the need to review each FTA individually and to not make assumptions. What is true for one product in one FTA is unlikely to be identical for the same product under a different FTA.

FTAs should be utilised, but remember that their use constitutes a tax deduction. Like any tax deduction it is crucial to make sure you qualify.

“ *However, duty reductions under free trade agreements do not occur automatically and it is truly a case of the “the devil lies in the detail”* ”



Coronavirus crisis highlights importance of Australian Trusted Trader (ATT) benefits

By the Department of Home Affairs

Global health emergencies, such as the recent novel coronavirus crisis can significantly impact travel and trade with origin countries, with restrictions placed on travel and trade in attempts to reduce the spread of disease. The novel coronavirus outbreak has resulted in restrictions on the movement of people between Australia and China, but air and sea cargo movements have also been impacted.

Even where traders are able to secure a transport route for their goods, another challenge has emerged relating to obtaining the certificates of origin required for *China-Australia Free Trade Agreement (ChAFTA)* preferential tariff treatment. Due to the virus threat, Chinese Government offices have closed temporarily, making it difficult to obtain the certificates required to claim ChAFTA preference at the time of import. Importers have up to twelve months to provide the certificate of origin and seek a refund, however this can greatly impact the cash flow of your business and there is currently no certainty on when Chinese offices will reopen.

Trusted Traders already have access to the ATT Origin Advance Ruling benefit, which makes it much easier to claim preferential tariff treatment under ChAFTA. All current ATT members should ensure that they are taking full advantage of the available benefits to reduce the burden of the current crisis situation as far as possible.

The ATT Origin Advance ruling benefit:

- Makes it easier to claim preferential tariff treatment under the ChAFTA. For most Chinese originating goods, this reduces import duties to zero.
- Is available to Trusted Traders who import goods that comply with the rules and regulations under ChAFTA.
- The ATT Origin Advance Ruling is valid for five years from the date it is issued.



- The one ruling covers all Chinese originating goods from multiple manufacturers, for multiple tariff classifications and multiple origin criteria the importer will bring in over the five-year period. Meaning new goods and product lines can easily be added to the ruling without the need to apply for new rulings. Without this benefit, one advance ruling is required per tariff classification or origin criteria.
- Removes the need for a ChAFTA Certificate of Origin, as ChAFTA preference can be claimed using a Declaration of Origin signed by the producer or exporter in China. A Declaration of Origin can only be used after the ATT Origin Advance Ruling has been issued.
- Saves time and money associated with the administrative burden of obtaining origin certificates or multiple rulings applications not prioritised under ATT. It will significantly reduce the number of

Advance Rulings required, which reduces red tape and helps to minimise barriers to trade.

- The ATT Origin Advance Ruling is valid from the date it is issued. It cannot be used to claim a refund of goods imported before this date.

The disruption caused by the novel coronavirus outbreak highlights the importance of traders having business continuity strategies in place to mitigate the effect of global trade disruptions, including becoming a Trusted Trader. Trusted Trader status ensures that traders can access and leverage the available trade facilitation benefits to the full extent. This is particularly important in times of global trade disruption, where Australian Trusted Trader Authorised Economic Operator (AEO) membership can result in even more significant trade facilitation advantages.



Australian Government



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Björn Johansson
Managing Director of Kuehne + Nagel Australia

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What's on...

Calendar

of events 2020



Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) are proud to present the following accredited compliance training and professional development events.

Further details and to book your place please go to www.FTAlliance.com.au/Upcoming-Events

WORLD CLASS TEAMS WORKSHOPS

Featuring Dianna Tapp, CEO, World Class Teams

Lead with Confidence, Authenticity and Insight

SYDNEY - Thursday 26 March 2020

4.00pm to 7.00pm

Novotel Sydney International Airport, 22 Levey Street, Wollie Creek

Increase Emotional Intelligence for your

Career Success

SYDNEY - Thursday 18 June 2020

4.00pm to 7.00pm

Novotel Sydney International Airport, 22 Levey Street, Wollie Creek

Optimise your Influence and Impact at Work

SYDNEY - Thursday 17 September 2020

4.00pm to 7.00pm

Novotel Sydney International Airport, 22 Levey Street, Wollie Creek

TASMANIAN EVENTS

2020 Tasmanian Freight & Logistics Forum

November 2020

(date changed & tbc due to coronavirus)

8.30am to 5.00pm

University of Tasmania, Australian Maritime College – Launceston

WOMEN IN LOGISTICS

2020 Women in Logistics Forum

Thursday 13 August 2020

(date may change due to coronavirus)

12.00pm to 4.00pm

Novotel Sydney International Airport, 22 Levey Street, Wollie Creek

CPD BORDER COMPLIANCE PROGRAM (24 CPD POINTS)

SYDNEY

Wednesday 1 April 2020 & repeated

Saturday 4 April 2020

8.30am to 4.30pm

Novotel Sydney Brighton Beach Hotel,

Cnr Grand Parade and Princess Street,

Brighton Le Sands

MELBOURNE

Friday 17 April 2020 & repeated

Saturday 18 April 2020

8.30am to 4.30pm

Hyatt Place Melbourne, 1 English Street,

Essendon Fields

PERTH

Saturday 2 May 2020 - 8.30am to 4.30pm

Hyatt Regency Perth, 99 Adelaide Terrace, Perth

BRISBANE

Wednesday 20 May 2020 - 8.30am to 4.30pm

Novotel Brisbane Airport, 6 – 8 The Circuit,

Brisbane Airport

ONLINE TRAINING

FTA and APSA offer practical online training at www.ComplianceNetFTA.com.au with resources and online assessment available at listed prices.

Members are offered unlimited Continuing Professional Development (CPD) and Continued Biosecurity Competency (CBC) training for \$150 (excl GST) per person per accreditation period (1 April to 31 March).

Further discounts are offered to businesses with multiple purchases with the option for an all-inclusive invoice for FTA Premium Membership and CPD / CBC training - price on application to info@FTAlliance.com.au

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