

19 January 2023

The Hon Dr Jim Chalmers MP – Treasurer (via email)

CC:

The Hon Catherine King MP - Minister for Infrastructure, Transport, Regional Development and Local Government

Senator the Hon Don Farrell - Minister for Trade and Tourism

The Hon Dr Andrew Leigh MP - Assistant Minister for Competition, Charities and Treasury

Australian Peak Shippers Association (APSA) - Committee of Management

PRODUCTIVITY COMMISSION INQUIRY AUSTRALIA'S MARITIME LOGISTICS SYSTEM

Dear Treasurer,

I am writing to you on behalf of the Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) in response to the Productivity Commission (PC) final report *Lifting productivity at Australia's container ports: between water, wharf and warehouse*.

ABOUT THE ALLIANCE

FTA and APSA have a hybrid membership of corporate businesses and leading trade associations – including in excess of 500 export, import, customs broker, freight forwarder and logistics businesses (member directory available at www.FTAlliance.com.au) and the *Australian Cotton Shippers' Association*, the *Australian International Movers Association*, the *Australian Council of Wool Exporters & Processors*, the *Australian Meat Industry Council*, the *Australian Dairy Products Federation*, the *Australian Horticulture Exporters and Import Association* and the *Tyre Stewardship Association*.

APSA is the peak body for Australia's containerised exporters and importers under *Part X of the Competition and Consumer Act 2010* as designated by the *Federal Minister of Infrastructure and Transport*. APSA also has board representation on the Global Shippers Forum (GSF) representing shippers' (exporter and importer) interests and that of their national associations in Asia, Europe, North and South America, Africa and Australasia.

Overview

FTA and APSA commend the PC in producing a comprehensive report addressing port productivity, infrastructure requirements, workplace arrangements and a need for a changed competition setting in vital parts of the maritime logistics system.

While the report has identified inefficiencies at Australia's major container ports cost the Australian economy about **\$600 million** per year, FTA and APSA conservatively estimate that the unreasonable administration of Terminal Access Charges and container detention fees alone has directly cost our trade sector **\$1 billion** over each of the last three years.

The following commentary focuses on four key aspects of the report, that if appropriately implemented, will significantly contribute to Australia's economic recovery by allowing our world class manufacturers and producers (supported by skilled customs brokers, freight forwarders and logistics professionals) to take advantage of the opportunities created by free trade agreements and those economies recovering from COVID-19.

SHIPPING COMPETITION

Repeal of Part X CCA

The Federal Government must incentivise foreign owned shipping lines to continue to service Australian trade in a free and open market. To that end, FTA and APSA see merit in the PC recommendation to simply remove current competition protections offered to shipping lines without interfering with price setting.

Like the PC, FTA and APSA question whether shipping line vessel sharing agreements should continue to be protected and exempt from competition law faced by others in Australian commerce. While there appears to be a consensus across shipping and trade representative bodies for the repeal of the current protections offered under *Part X of the Competition and Consumer Act*, the difference of opinion lies in what should replace it.

FTA and APSA understand that shipping lines are looking for more liberal '*block exemption*' measures, presumably along the lines of the European Commission *Consortia Block Exemption Regime (CBER)*. FTA and APSA note the advocacy of the Global Shippers Forum and those of multiple international associations advocating to the European Commission not to continue its CBER beyond the current period (expiration in 2024) believing its benefits have not been fairly shared with users of liner shipping services in the time since it was last renewed in 2020.

FTA and APSA agree with the PC that the onus should be placed on shipping lines to show that their agreements provide a net public benefit before entering into agreements whilst facilitating class exemptions allowing businesses to collectively bargain in negotiating terms with shipping lines.

Exclusive dealings via vertical integration

FTA and APSA are advised by members of increased scenarios whereby shipping lines are offering capacity and / or significantly discounted rates contingent on using their other '*vertically integrated*' services such as landside transport and customs clearances. Whilst benefits derived from vertical integration offerings are encouraged, it is imperative that competition regulators monitor any illegal exclusive dealing arrangements.

Quayside cost recovery

It is evident from consecutive Australian Competition and Consumer Commission (ACCC) stevedore monitoring reports that shipping line consortia are also benefitting from significantly reduced quayside charges administered by their contracted stevedore and empty container park providers. Savings that are clearly not being passed on down the supply chain via reductions in Terminal Handling Charges.

With less quayside revenue, stevedores and empty container parks have resorted to a '*ransom*' model forcing transport operators to pay Terminal Access Charge (TAC) and ancillary fees or be denied access to container collection / dispatch facilities.

It is not sustainable for our exporters and importers to absorb this additional impost of hundreds of millions of dollars annually whereby they cannot influence service or price.

TERMINAL ACCESS CHARGES

Stevedores

The consistent position of FTA and APSA over many years of advocacy aligns with the PC finding in their draft report, recommending all charges be negotiated on a commercial in-confidence basis between the stevedore and their contracted client (shipping lines) negating the need to impose charges on third parties who have no ability to influence service or price.

All businesses face a dilemma of how to deal with unavoidable costs such as rent, infrastructure, labour, and power. Those same businesses are then forced to either absorb these costs or pass them on to their commercial clients. Similarly, stevedores and empty container parks should be forced to either absorb operating costs or pass these on to their commercial client (shipping lines). Shipping lines then have the choice to absorb or pass those costs onto exporters, importers and freight forwarders through negotiated freight rates and associated charges.

The existing voluntary arrangements established by the Victorian government and adopted by the National Transport Commission have proven to be futile, providing no ability to influence price, and giving stevedores' tacit approval to rapidly and significantly inflate fees levied against our domestic transport operators.

FTA and APSA note that the PC has deviated away from its original position and now recommend a mandatory code with the ACCC to act as the pricing regulator with special provisions to keep stevedores highly accountable for any charges imposed on the landside logistics sector.

The proposed mandatory code will undoubtedly be an improvement to the current regime but will be less effective than simply allowing market forces to take effect by forcing cost recovery to take place exclusively via contracted commercial parties. Shipping lines are best placed to keep a lid on prices charged by their commercial suppliers.

Should the Federal Government implement the PC recommendation, it is essential that it do so in its entirety as any watering down of this recommendation will have devastating impacts, leaving our essential containerised trade sector exposed to ongoing and uncontrolled spiralling costs.

Empty Container Parks

While much of the attention has been focussed on stevedores, it is important to note the empty container parks (ECPs) have adopted an identical cost recovery model. Transport operators cannot choose which ECP to dehire (return) containers after being unpacked by an importer.

The transport operator must also book a time slot with the ECP. This booking started as a minimal fee to cover technology costs, to one that now exceeds up to \$100 per container. Again, the transport operator has no influence on service and is purely a *'price taker'*.

The Federal Government must implement equivalent regulation to both stevedores and ECPs to protect the Australian export and import sectors from the current unfair cost recovery models.

CONTAINER DETENTION

Import container detention

FTA and APSA provided extensive material to the PC highlighting the administration of exorbitant container detention fees, payable when delays occur in returning empty containers within prescribed periods as set by shipping lines.

Furthermore, evidence included scenarios whereby these fees are unfairly applied in an environment of 'vessel bunching', limited operating hours of facilities to receive empty containers, the empty container park being at capacity, delays in border and biosecurity releases, extreme supply chain labour shortages and in many cases, the detention clock starting at a time when cargo is physically unavailable for collection from the wharf.

The impost of an unreasonable container detention charging regime continues to be a significant impost for Australian commerce and a windfall for foreign owned shipping lines contributing to their multi-billion dollar annual profits. A remedy is required in an environment with inflationary pressures being felt across Australia with charges being passed down the supply chain, adversely affecting manufacturers, farmers, rural communities, and consumers.

This is hitting hard – everyone from major retailers through to small businesses. Freight forwarders, customs brokers and transport companies are left with the unenviable position of trying to explain this unbudgeted and unreasonable fee to importers and exporters costing anywhere from hundreds of dollars per consignment up to hundreds of thousands of dollars in some circumstances.

Whilst the PC sees a part of the solution being to remove the shipping line protections from Australian Consumer Law unfair contract provisions, we encourage the Federal Government to make decisive action by following the ACCC position in its most recent container stevedore monitoring report by creating a distinct prohibition on such unfair or unreasonable commercial conduct, either confined to the shipping industry as with the US model, or more broadly.

FTA and APSA remain of the view that the only realistic solution is for regulatory intervention to impose limits on when, or the amount of, container detention that can be charged.

Some options to protect importers could be:

- requiring shipping lines to offer to sell the container to the consignee after a set period and that the sale would end the detention period;
- cap the amount of detention to the lesser of the value of the container or the actual loss suffered by the shipping line;
- place a limit on shipping line's being able to charge detention where the delay in returning the container was due to:
 - border or biosecurity intervention (not due to a breach of law by the importer)
 - Force majeure event;
 - any act of the shipping line (or their contractors);
 - restricting the daily charges to an amount equal to set amount - for instance, the provision could provide that the maximum daily charge cannot be greater than an amount equal to 5% of the replacement value of the container.

Export container detention

Similar considerations are also required in context of exports whereby some shipping lines start the free detention from the time of container collection to the time it boards the vessel for export. Again, this is unfair in circumstances whereby vessels bypass ports or face delays. FTA and APSA see the need for some form of safeguard for the detention clock to stop once the export container is received by the stevedore.

INDUSTRIAL RELATIONS

FTA and APSA note the far reaching recommendations for industrial relations reform made by the PC. A welcome inclusion addresses a current limitation within the Fair Work Act, whereby a representative body cannot make an application to suspend Protected Industrial Action based on economic harm as they are not directly affected.

The recommendation put forward by the PC aligns with the FTA and APSA advocacy position to allow a broader range of third parties to apply to terminate Protected Industrial Action occurring in container ports. Importantly, this outcome would protect individual members of representative bodies from the associated exposure in making an application as well as allowing a broader representation of views and evidence.

RESOURCES

FTA / APSA Submission to the Productivity Commission

- [FTA / APSA submission to the Productivity Commission - 11 Feb 2022](#)
- [FTA / APSA supplementary submission \(Terminal Access Charges\) – 19 Apr 2022](#)
- [Supplementary FTA/APSAs submission \(Container Detention\) – 4 May 2022](#)
- [Supplementary FTA/APSAs submission \(Landside Congestion\) – 19 May 2022](#)

Terminal Access Charges

- Historical record of stevedore TAC increases (refer attached)
- Historical record of ECP vehicle booking fee increases (refer attached)

FTA / APSA media coverage of the PC inquiry final report

- [ABC Country Hour - speaking out against terminal charges](#) (45min:27Sec to 52min:50sec)
- [DCN - FTAs recommendations to the Productivity Commission](#)
- [AFR - Patrick Terminals says curbing strikes at 'core' of port productivity](#)
- [DCN – PC report fuels more port efficiency discussions](#)
- [ABC Country Hour – mandatory code and PC report](#) (10min:30sec to 17min:50sec)
- [MHD - Patrick Terminals and FTA respond to PCI report](#)
- [SkyNews BusinessNow – PC recommendations](#)

FTA and APSA look forward to further engagement with the Federal Government in implementing essential reforms in response to the PC findings and recommendations.

Paul Zalai

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